642

SUPREME COURT OF THE UNITED STATES.

No. ~~118.~~ 63.

BERNARDO SAMPERYAC & JOSEPH STEWART, APPELL'TS,

VERSUS

THE UNITED STATES.

APPEAL FROM THE SUPERIOR COURT OF THE TERRITORY OF ARKANSAS.

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THE UNITED STATES OF AMERICA, *Territory of Arkansas*, } *Sct.*

Be it remembered, that heretofore, to wit, on the 21st day of November, in the year 1827, Bernardo Samperyac, by his solicitor, filed in the clerk's office of the superior court in the Territory of Arkansas, in chancery sitting, for the adjudication of unconfirmed French and Spanish land claims, his petition in the following words and figures, to wit:

TERRITORY OF ARKANSAS:

In the Superior Court in and for the Territory, of the term of December, 1827.

To the honorable the Judges of the Superior Court of the Territory of Arkansas, in chancery sitting:

Your orator, Bernardo Sampervac, humbly complaining, showeth unto your honors, that, on the 6th day of October, in the year 1789, at New Orleans, in the then province of Louisiana, then and there an inhabitant of the , addressed a petition to then Governor of the province of Louisiana and its dependencies, asking of the said Governor a grant for a tract of land, in full property, containing ten arpens in front, by the usual depth, on Strawberry river, in Arkansas district, being the domain of his Catholic Majesty, and situate in the now Territory of Arkansas, and within the jurisdiction of this court. And afterwards, to wit, on the 11th day of October, 1789, at New Orleans, the said Governor, who then and there had full power to grant land, granted the prayer of your petitioner, and gave unto him the aforesaid tract of land, containing ten arpens in front, by the usual depth; all of which will more fully appear by a reference to a copy of the aforesaid petition and grant, hereunto annexed, and marked D, and which your orator prays may be made a part of this his bill. And your orator further represents, that, at the time said grant was so made, an order of survey was issued to the surveyor general of said province, which order is hereunto annexed, and is prayed may be taken as a part of this his petition. And your orator further presents, that, by virtue of said grant, concession, or order of survey, your petitioner acquired a claim to the said ten arpens in front, by the usual depth, of land, which claim was. and is. secured by treaty between the United States and the French Republic, of the 30th day of April, 1803, which might have been perfected into a complete title under, and in conformity to, the laws, usages, and customs, of the Government of Spain, under which the same originated, had not the sovereignty of the country been transferred to the United States. And your orator further presents, that the aforesaid claim was never surveyed under either the Government of Spain or that of the United States. And your orator further presents, that the aforesaid petition, grant, and order of survey, have never been presented to any board of commissioners for adjusting land titles, within his knowledge. And your orator is informed, and verily believes, that the said tract of land has been appropriated by the United States, and patented to other individuals, to your orator unknown, nor has he themeans of ascertaining.

In tender consideration, therefore, to the end that complete and ample justice may be done, your orator prays that your honors may take his case into consideration, examine into his title, under, and in conformity to, the laws, usages, and customs of the Spanish Government, and agreeably to the

treaty between the United States and the French Republic relative to said claims, and grant and confirm unto your orator the aforesaid tract of land, in conformity to the principles of justice, and according to the laws and ordinances of the Spanish Government, and agreeably to an act of Congress, passed the 26th day of May, 1824, entitled "An act enabling the claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims." And your orator further prays, that you may decree unto him the privilege of locating a like quantity of land elsewhere in the said Territory of Arkansas, upon such conditions as your honors may think according to the provisions of the said law. And your orator further prays, that you may grant unto him such other and further relief as to justice and good conscience may belong; and that you may grant him your writ of subpœna, directed, &c. commanding the attorney of the United States for the district of Arkansas, to appear before your honors, then and there to answer all and singular the allegations set forth in this, your orator's, bill, as fully as though the same was again propounded question by question. And, as in duty bound, your orator will ever pray, &c.

BERNARDO SAMPERYAC,
By his Solicitor,
R. C. ODEN.

And whereas, on the 21st day of November, 1827, the following writ issued against Sam. C. Roane, United States' district attorney for the Territory of *of* Arkansas. Which writ is in the following words and figures, to wit:

TERRITORY OF ARKANSAS, } *Sct.*
United States, of America, }

To the Marshal of Arkansas Territory —Greeting:

You are hereby commanded to summon Sam. C. Roane, attorney of the United States for Arkansas Territory, to appear before the Judges of our Superior Court, at the court house, in the town of Little Rock, in the county of Pulaski, on the first day of our next December term, then and there to answer Bernardo Samperyac to a petition for the confirmation of 400 arpens of land. And have you then there this writ.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office at Little Rock, this 21st day of Nov. 1827, [L. S.] and of the independence of the United States of America the 52d.

THO. W. NEWTON, *D'y Clerk.*

Which subpœna and petition were returned as follows, by the marshal, to wit:

Territory of Arks. Executed the within writ of subpœna and petition on Sam. C. Roane, U. S. D. Att'y, Nov. 24th, 1827.

Service - - - - - - - -	$2 00
Cr. mige. 120, at 5 cents per mile - - - -	6 00
	$8 00

J. T. GARRETT, *Dp. M.*

The following is a copy of the original petition and order of survey, filed in said case of Bernardo Samperyac against the United States, to wit:

"A el Senor Governador de la provincia de la Louisiana y dependiencias, &c. &c. &c.

Bernardo Samperyac, desecuido establesere sobre el rio de Freses en las Arkansas suplica a V. la agala gracia de concederle la contidad de dies arpanes de tierra de frente con la profoundidad ordiniaria ciendo tierras de S. M. C. y no aciendo perjuicio es gracia que el demandante aguarda de vuestra bondad y ruega a Dios que conserva sus deas. Neuva Orlians, 6 de Octr. de 1789."

BER^DO. SAMPERYAC.

NUEVA ORLIANS, 11 *de Octr. de* 1789.

El agrimensor de esta provincia Dn. Carlos Trudeau establesera esa parte sobre los dies arpanes de tierra que pide con la profondidad ordinaria y expresera a continuacion los limites para que consten al tiempo de hacer el apio para librar el titulo en forma.

MIRO.

Which petition and order of survey was translated as follows, by James H. Lucas, the sworn interpreter and translator to the Superior Court of Arkansas Territory, to wit:

" *To the Governor of the province of Louisiana and its dependencies, &c. &c.*

Bernardo Samperyac, wishing to establish himself on Strawberry river, in the Arkansas district, prays that you will do him the favor to grant him ten arpens of land in front, by the usual depth, of being the lands of his C. M. and not causing any prejudice; a favor your petitioner hopes to receive from your bounty; and he will ever pray to God for your health.

BERNARDO SAMPERYAC.

New Orleans, 6th Oct. 1789.

NEW ORLEANS, 11*th Oct.* 1789.

" The surveyor of this province, Don Charles Trudeau, will establish this tract on the ten arpens of land, requested by the usual depth, and will mention the bounds, in order that they may appear at the time that the boundaries have to be defined for the purpose of making a title in form.

MIRO.

To which petition, &c. Sam. C. Roane, United States' district attorney, filed in court the following answer, to wit:

TERRITORY OF ARKANSAS, *Sct.*

In the Superior Court for Ark. Ter. for the adjudication of French and Spanish land claims, to Dec. term, 1827.

The answer of Sam. C. Roane, United States' district att. for the Territory aforesaid, to the bill in chancery, filed by Bernardo Samperyac, for the confirmation of 400 arpens of land.

The said Sam. C. Roane, att. as aforesaid, saving to the U. S. all and

singular the many errors and insufficiencies in the complainant's bill contained, answers and says, that, he is wholly uninformed as to the truth of the several facts and allegations set forth in said complainant's bill, and he hereby denies all and every of said facts and allegations. And further answering, says, the Spanish officers (the Governors General and Sub-Commandants) granted lands to individuals, either for services rendered the Government, or for the purpose of cultivation, or keeping of cattle, and this with a view to reward the grantee for services rendered, or to promote the settlement of the country, and that lands cannot be confirmed unless it be to persons who actually resided in Louisiana, or to their legal representatives; and that grants, &c. could only be made legally to persons in existence; and that Bernardo Samperyac, in whose name this bill is filed, was a fictitious person, never having had an actual existence; or if such person ever had any existence, he was a foreigner, or is now dead, and made no transfer or assignment in his lifetime; has no legal representatives in existence, nor is there any now living who is authorized to file this bill, or prosecute this suit. And the U. S., by their attorney, prays that this bill be dismissed with costs.

S. C. ROANE,
U. S. Att. A. T.

And whereas, at a superior court continued and holden at the court-house, in the town of Little Rock, for the adjudication of unconfirmed French and Spanish land claims, on Wednesday, the 19th day of December, in the year 1827: Present, the honorables William Trimble and Benjamin Johnson, Judges, the following proceedings were had, to wit: the following deposition or affidavit was filed in court, in the words and figures following:

BERNARDO SAMPERYAC *vs.* UNITED STATES.

Arkansas Territory, United States' Superior Court, December term, 1827. *In the matter of the petition of Bernardo Samperyac, for the confirmation of four hundred arpens of land.*

John Hebrard, of the parish of Ouchita, and State of Louisiana, aged about seventy one years, being sworn, says, that he was Alcade in the province of Louisiana, under the Spanish Government, from the year one thousand seven hundred and eighty-nine to ninety-one, under the appointment of Miro, Governor of said province; that he was Commandant in Catahoola, from the year ninety-seven, until the country was ceded and delivered to the United States, under the appointment of Manuel Gayoso de Lemos, Governor of said province; that he was well acquainted with the handwriting of the said Governors; that he has often seen them both write; that he was often in the executive offices during the times they were respectively Governors, and, from his official situation, he had occasion for a continued correspondence with each of them during the times this respondent was in office; that he has examined the signature to the concession and order of survey of Bernardo Samperyac in this case, (a copy of which petition and order is filed with the bill in this case,) and says it is the signature, and in the proper handwriting of said Miro, Governor of said province at the date of said concession, or order of survey, in this case. Witness says, that the concessions, or orders of survey, in this case, is in the most usual form and mode of granting lands by said Governors, and was such a title as could have been perfected into a title in form under the Spanish Government; and

when thus granted, were considered and treated by the petitioner and the Government as established titles, and were to be surveyed or not as the concessioner chose; that concession, or order of survey, calling for lands fronting on waters, were to be run off, when surveyed, as follows: Commencing from forty to sixty feet back from the beginning of the first high land, after passing all overflowed, if any, in front; and the concessioners were authorized to locate them on entirely good, arable land, so as not to include overflowed or barren land, unless they chose. Witness says the Commandant of Arkansas commenced on the Mississippi river, about forty miles below New Madrid, and fronted on the Mississippi down to Grand Point Coupee, (now called Lake Providence, in Ouchita parish, and State of Louisiana,) and extending back west, so as to include all the waters which run into the Mississippi from the west between those points.

That, from an examination of the map of the country bounding on Strawberry river, and from his own knowledge of that stream, and having hunted, trapped, and traded with the Indians, with a large party under his command, of Indians and whites, for about three years, he has no doubt that the lands in this case have been appropriated by the Government of the United States.

Cross-examined.

Do you know Bernardo Sainperyac ?

Answer. I do; and believe he is now living on Red river, in Natchitoches parish, and that he resided in said parish at the date of said order of survey.

Did you have a written commission when commandant of Catahoola; and is it in existence; and if so, where is it ?

Answer. I had a written commission from Manuel Gayoso de Lemos, as command of Catahoola, which is now at my residence in Louisiana; also, a commission from Miro, as Alcade, which is also at my residence.

Are you acquainted with the manner and consideration for which the Spanish Governors granted lands to individuals ?

Answer. I was; the consideration was frequently for services rendered the Government, but much more frequent to induce population; and any man from any quarter could, and generally did, obtain concessions and orders of survey.

Did the Spanish Governors ever keep a record of grants for land ?

Answer. They did, but the destruction of the offices in New Orleans by fire was supposed to have destroyed a great part; and, I have no doubt, many more were purloined and taken off by officers attached to the Executive offices at or about the change of Government; and, if I recollect right, the fire in New Orleans was about the year 1792 or '93.

Do you know whether the Governors General were limited in granting lands ?

Answer. I think they were as to jurisdiction. They were authorized and empowered by the laws, usages, and customs of the Spanish Government to grant lands thoughout the domain in the province of Louisiana, which commenced at the mouth of the Mississippi river, and extended back so as to include all Upper and Lower Louisiana. As to quantity of land—they were authorized to grant any quantity not exceding one league square.

J. HEBERRARD.

Sworn to, and subscribed in open court, 19th December, 1827.

THO. W. NEWTON, *D'y Clk.*

And whereas, at a superior court continued and holden in the town of Little Rock, for the adjudication of French and Spanish land claims, on Wednesday, the nineteenth day of Dec'r, in the year one thousand eight hundred and twenty-seven (1827): Present, the honorable William Trimble and Benjamin Johnson, Judges, the following proceedings were had in this cause, to wit:

"BERNARDO SAMPERYAC *vs.* UNITED STATES.

Petition for confirmation of 400 *arpens of land.*

And now, at this day, as well the said Bernardo Samperyac, by his solicitors, as the United States' attorney, and this cause came on for final hearing and adjudication on petition, exhibits, answer, replication, and evidence: Whereupon, it appearing to the satisfaction of the court, that, on the 6th day of October, A. D. 1789, at New Orleans, in the then province of Louisiana, Miro, then Governor of said province, by his certain grant, concession, or order of survey, by him then and there legally made, granted and conceded to said Bernardo Samperyac, then and there resident in said province of Louisiana, four hundred arpens of land in the then province of Louisiana, now Territory of Arkansas, and within the jurisdiction of this court, in manner and form as set forth in the petition in this case. And it appearing to the satisfaction of the court, that said four hundred arpens of land was secured to said Samperyac by the treaty between the United States and the French Republic, of the 30th April, 1803, and that the same might have been perfected into a complete title under, and in conformity to, the laws, usages, and customs of the Spanish Government, had not the sovereignty of the country been transferred to the United States; and it also appearing, to the satisfaction of the court, that the lands called for by the ricket in this case, has been sold by the United States, or otherwise appropriated: It is, therefore, ordered, adjudged and decreed by the court, that the said Bernardo Samperyac have and recover of the United States the said four hundred arpens of land; to have and to hold the same, to him and his heirs, forever: And that complainant, or his legal representatives, have leave to enter the like quantity of land in any land office in the Territory of Arkansas, agreeably to the act of Congress, entitled "An act enabling the claimants to land within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims," passed May 26th, 1824, and the act extending the provisions of said act to May, 1828: And that the complainant pay the costs.

And whereas, on the tenth day of April, in the year one thousand eight hundred and thirty, Sam. C. Roane, United States' district attorney, for the district of Arkansas, filed in the said superior court, by leave of the same, his bill, in the nature of a bill of review, to review and set aside the decree in the foregoing case; which bill is in the following words and figures, (both in print and manuscript; that is to say, a part in each,) to wit:

To the Honorable the Judges of the Superior Court of the Territory of Arkansas, in chancery sitting—April term, 1830:

Sam. C. Roane, attorney of the United States for the Territory of Arkansas, for and in behalf of the United States of America, respectfully

showeth unto your honors: That Bernardo Samperyac, at the December term, in the year 1827, of this honorable court, filed his petition or bill, stating, that, on the 6th day of October, in the year 1789, at New Orleans, in the then province of Louisiana, then and there being an inhabitant of , addressed a petition to Miro, then Governor of Louisiana and its dependencies, asking of the said Governor, a grant of a tract of land, in full property, containing in front ten arpens, by the usual depth, on the Strawberry river, in Arkansas district, of the domain of his Catholic Majesty, situate in the now Territory of Arkansas, and within the jurisdiction of this court. And that afterwards, to wit, on the 11th day of October, in the year 1789, at New Orleans, the said Governor, who then and there had full powers to grant land, granted the prayer of the said petitioner, and gave unto him the aforesaid tract of land, containing ten arpens, by the usual depth, and which, he states, will more fully appear by a reference to a copy of said petition, and grant thereto annexed, and marked D, and which was prayed to be made a part of said bill. And it is further set forth in the said bill, that, at the time said grant was made, an order of survey was issued to the Surveyor General of said province, which order was also stated to be annexed, and prayed to be made a part of said bill. And it is farther set forth in said bill, that, by virtue of said grant, concession, or order of survey, said petitioner acquired a claim to the said ten arpens, by the usual depth, of land; which said claim was and is secured by the treaty between the United States and the French Republic, of the 30th day of April, 1803, and which might have been perfected into a complete title, under and in conformity to the laws, usages, and customs, of the Government of Spain, under which the same originated, had not the sovereignty of the country been transferred to the United States. And it is farther set forth, that the said claim was never surveyed, under either the Government of Spain or that of the United States; and farther, that the aforesaid petition, or grant, and order of survey, had never been presented to any board of commissioners for adjusting land titles, within the knowledge of the said petitioner. And it is farther stated in said bill, that the said petitioner believes that the said tract of land has been appropriated by the United States, and patented to other individuals, to the said petitioner unknown, and that he had not the means of ascertaining. Whereupon, the said petitioner prayed that the said claim might be confirmed to him, in conformity to the principles of justice, and according to the laws and ordinances of the Spanish Government, and agreeably to an act of Congress, passed the 26th day of May, 1824, entitled "An act enabling claimants to lands within the limits of the State of Missouri and Territory of Arkansas to institute proceedings to try the validity of their claims;" and also prayed to be decreed the privilege of locating a like quantity of land elsewhere in the said Territory of Arkansas, according to the provisions of said law; and also prayed for such other and farther relief as to justice and good conscience might belong.

And thereupon, at the said December term, in the year 1827, of the said court, the United States, by Sam C. Roane, their attorney for the Territory of Arkansas, appeared and answered said petition; and for answer thereunto, stated, that he was wholly uninformed as to the truth of the several facts and allegations set forth in said complainant's bill, and denied all and every of said facts and allegations; and farthermore, that the Spanish officers (the Governors General and sub-commandants) granted lands to individuals, either for services rendered the Government, or for the purpose of cultivation and

keeping of cattle, and this with a view to reward the grantee for services rendered, or to promote the settlement of the country; and that lands cannot be confirmed, unless it be to persons who actually resided in Louisiana, or to their legal representatives; and that grants, &c. could only be made legally to persons in existence, and that Bernardo Samperyac, in whose name this bill is filed, was a fictitious person, never having had an actual existence, or, if such person ever had any existence, he was a foreigner, or is now dead, and made no transfer or assignment in his lifetime, has no legal representatives in existence, nor is there any now living who is authorized to file this bill or prosecute this suit: and therefore prayed, in behalf of the United States, that this bill might be dismissed, with costs. And at said December term, in the year 1827, of said court, the said court, without having previously set said cause for hearing, agreeably to the principles and rules of equity, and the laws of the land, and without affording to the attorney for the United States an opportunity to prove the allegations contained in his answer to said bill or petition, took up said cause for adjudication, when the testimony on behalf of the claimant was received by the court, and his depositions were published. Whereupon, it was decreed, at the said December term, 1827, of, and by your honorable court, that said Bernardo Samperyac have and recover of the United States the said 400 arpens of land, to have and to hold the same to him and his heirs for ever; and that the said complainant, or his legal representatives, have leave to enter the like quantity of land in any land office in the Territory of Arkansas, agreeably to the provisions of the above recited act of Congress; which said decree now remains of record in this honorable court.

But your orator, for, and on behalf of the United States of America, avers and says, that the United States are aggrieved by said decree, and that the said United States ought not to be bound thereby; nor should any such decree have been made or pronounced against the said United States; neither ought the said Bernardo Samperyac to have recovered against the United States the land claimed and set forth in his said petition, and which was decreed to him as aforesaid; because your orator says that the said decree is erroneous, and was obtained by fraud and surprize, and ought to be reversed and avoided. And according to the course of proceedings in this honorable court, your orator farther expressly charges, that the original petition, or *requete*, and order of survey, exhibited in this case, is forged and corrupt, and was never signed by Miro, Governor of Louisiana, as the same purports to have been, and that this fact has come to the knowledge of your orator since the decree was entered in this case. Your orator farther charges, that the said Bernardo Samperyac is a fictitious person, and that he never had an existence, and if any such person ever did exist, he was dead at the time of exhibiting his bill. Your orator farther charges, that John Heberard, and the witnesses upon whose testimony this case was confirmed by this honorable court, did each of them commit the crime of perjury in giving their testimony in this case, and that the statements sworn to by them, upon the hearing of this case, (as set forth in their respective depositions upon file,) are false and corrupt. Your orator farther states, that the original petition and order of survey in this case, shows upon its face, that it was not made as early as the year 1789, but appears to have been made long since, as may be seen by comparing it with the genuine grants of the said Governor Miro, now on file in this honorable court, with the affidavit of Isaac T. Preston; and that the said petition, or *requete*, was

not written by a Spaniard, nor the order of survey, by a Spanish officer, is fully established by the numerous errors committed in spelling the Spanish words; and from the fact, that both the paper and the writing appear to have been recently made. Your orator farther charges, that said decree was obtained by fraud, covin, and misrepresentation, and in violation of the principles and rules of equity, and contrary to the laws of the United States and of the Territory of Arkansas.

And your orator, for and on behalf of the United States, avers and says, that since the adjudication and decree was made in this case, he has discovered new and important record evidence, which was not within his control, and the existence of which he did not know, and had not time to procure, at the time of the hearing of this cause; all of which allegations, charges, and averments, he believes he will be able to prove to the entire satisfaction of this honorable court, and that he will be able to procure and exhibit the same to this honorable court on the rehearing of this cause. For all of which said frauds, errors, and imperfections, in the said decree, your orator, for and on behalf of the United States, prays that the said decree may be reviewed by this honorable court, and humbly conceives that the United States should be relieved therefrom.

In tender consideration whereof, and for that there are divers other errors, imperfections, and frauds, in the said decree and proceedings, by reason whereof the same ought to be reversed, annulled, and made void: To the end, therefore, that the said decree and all proceedings thereupon may be reviewed, reversed, annulled, and made void, and that the said Bernardo Samperyac, and his confederates, when discovered, may answer the premises, and particularly that they may be compelled to produce before this honorable court, the original petition and order of survey originally on file in this court, and now withdrawn from the records of this court, and that the United States may be relieved in all and singular the premises, according to equity and good conscience.

And may it please your honors, to grant unto the United States your writ of subpœna, to review and answer, directed to the marshal of the Territory of Arkansas, commanding the said Bernardo Samperyac to appear before your honors, and answer the premises aforesaid.

And your orator, as in duty bound, will ever pray, &c.

SAM. C. ROANE,
U. S. District Attorney for the Territory of Arkansas.

A copy: Teste, W. FIELD, *Clerk.*

Upon which bill of review, the following subpœna in chancery issued, to wit:

"TERRITORY OF ARKANSAS, } *Sct.*
United States of America. }

To the Marshal of the Territory of Arkansas—greeting:

You are hereby commanded to summon Bernardo Samperyac to appear before the Judges of our superior court, at the court-house, in the town of Little Rock, in the county of Pulaski, on the first day of our next May term, then and there to answer the United States to a bill of review in chancery, wherein the United States are complainants, and the said Bernardo Samperyac is defendant; and have you then there this writ.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at Little Rock, this 15th day of April, 1830, and of the independence of the United States of America, the 54th.

[L. s.] CHS. CALDWELL, *dept. for D. E. McKenney, clerk.*

On which subpœna is the following endorsement, to wit:

"Not to be found in Arkansas Territory, May 17, 1830. Costs 50 cents.
SAM. M. RUTHERFORD, *D. M.*

And at a superior court for the adjudication of French and Spanish land claims, began and held at the court-house, in the town of Little Rock, in the Territory of Arkansas, on the 17th day of May, in the year one thousand eight hundred and thirty, being the third Monday in said month, the following proceedings were had before the honorable Benjamin Johnson, one of the Judges of said court, to wit:

"UNITED STATES, *vs.* BERNARDO SAMPERYAC. } *Bill of review.*

On the motion of Sam. C. Roane, esquire, United States' district attorney for the Territory of Arkansas, and it appearing to the satisfaction of the court, that Bernardo Samperyac is not an inhabitant of this Territory: It is therefore ordered, that, unless the said Bernardo Samperyac appear, plead, answer, or demur to the complainant's bill, on or before the third Monday in July next, the matters and things set forth in the complainant's bill, be taken *pro confesso*, and a decree entered accordingly.

It is further ordered, that the complainants cause a copy of this order to be published four weeks, successively, in the Arkansas Gazette, a newspaper published in this Territory.

And whereas, at a superior court continued and holden, in the town of Little Rock, in the Territory of Arkansas, on Monday, the 26th day of July, 1830, Sam. C. Roane, esq., United States' district attorney, filed in court the certificate of William E. Woodruff, editor and proprietor of the Arkansas Gazette, a newspaper published in said Territory; which certificate is in the following words and figures, to wit:

"I, William E. Woodruff, editor of the Arkansas Gazette, a newspaper published in the town of Little Rock, in the Territory of Arkansas, do hereby certify that an order of the superior court, for the adjudication of unconfirmed French and Spanish claims to land in said Territory, in the case of the United States of America vs. Bernardo Samperyac, (of which the annexed is a true and perfect copy,) has been regularly published in said newspaper for four weeks successively, commencing on the 8th, and ending on the 29th day of June, 1830. Given under my hand at Little Rock, A. T., this 1st day of July, 1830.

WM. E. WOODRUFF."

And whereas, at a superior court continued and holden at the court-house, in the town of Little Rock, in the Territory of Arkansas, on Monday, the 9th day of August, in the year 1830, the following proceedings were had

before the honorables Benj. Johnson, James W. Bates, Thos. P. Eskridge, and Edwd. Cross, Judges of said superior court, to wit:

"The UNITED STATES, complainants, *against* BERNARDO SAMPERYAC, defendant. } *In chancery on bill of review.*

On motion, it is ordered that this cause be continued until the next term of this court.

And, at a superior court for the adjudication of French and Spanish land claims, continued and holden at the court-house, in the town of Little Rock, on Wednesday, the 27th day of October, in the year 1830, the following proceedings were had before the honorables Benjamin Johnson, Edward Cross, and James Woodson Bates, three of the judges of said court, present.

The UNITED STATES, complainants, *against* BERNARDO SAMPERYAC, defendant. } *In chancery.*

On motion of Joseph Stewart, by his solicitors, leave is granted him to file his answer to the bill of review in this case; which answer was duly subscribed and sworn to, and filed in court." And is in the following words and figures, to wit:

"*The answer of Joseph Stewart, who is made a defendant to a bill of complaint of the United States exhibited against Barnardo Samperyac.*

The defendant, now and at all times hereafter, saving and reserving to himself all manner of benefit and advantage of exception to the manifold errors and insufficiencies in the complainants' said bill contained, for answer thereto, or to so much thereof as this defendant is advised is material for him to make answer unto, he answers and says: he admits that Bernardo Samperyac, in the bill named, exhibited his bill of complaint, on or about the 21st day of November, in the year eighteen hundred and twenty-seven; that the same, with a subpœna, was served on Sam. C. Roane, attorney of the United States for the district of Arkansas, on the twenty-fourth day of November aforesaid, in the year aforesaid, and the same was returned and filed, on the nineteenth day of December, in the eighteen hundred and twenty seven.

This defendant admits that the said Samperyac claimed a confirmation, by virtue of a grant or order of survey, made and executed by Miro, as in the original bill of said Bernardo, is set forth and recited in the bill of complaint of the United States, and by force of the act of Congress of the United States passed the twenty-sixth day of May, in the year eighteen hundred twenty-four, entitled "An act enabling claimants to land within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims, continued in force by an act of Congress passed the day of in the year . This defendant further admits that the said Sam. C. Roane, attorney for the United States, filed his answer to the said bill of the said Bernardo, denying all and every of said facts and allegations in the said bill of the said Bernardo set forth and charged, and put the said complainant to the same, and also to disprove the allegations set up and charged in the answer of the said Sam. C. Roane as attorney for the United States as aforesaid, and thereupon the said com-

plainant, Bernardo, did prove to the satisfaction of said court, at the said December term thereof, the several allegations charged and set forth in said bill of complaint of said Bernardo; and, moreover, then and there did disprove the answer of the said Sam. C. Roane, attorney as aforesaid, to the satisfaction of said court, or so much thereof as was material for him to disprove.

This respondent is advised to say, that, by the laws of the land, under and by virtue, and by virtue of which the proceedings in the above case were instituted and conducted, the court ought not, and could not rightfully have set the above cause for hearing, in any other way and manner than was done in the above case, and was bound to try the same without any continuance, unless for good cause shown, that the said Sam. C. Roane, attorney as aforesaid, did have such time as he asked, and the law would warrant, to prove the allegations set forth in his said answer to the complainant bill of complaint.

This respondent admits that the said court, at the said December term thereof, did hear the said complaint of the said Bernardo, and also the defence of the said Sam. C. Roane, attorney as aforesaid, touching the matters in issue between the complainant and the United States; and on satisfactory proof to the said court, and upon mature deliberation, the said *the said* court did then and there adjudge, order, and decree to the said Bernardo, the quantity of land in the petition mentioned; and that the said Bernardo, or his legal representatives, have leave to enter the like quantity of land in any land office in the Territory of Arkansas, but for greater certainty, the said decree is here referred to as part of this respondent's answer.

This respondent is advised to say, and does say, that there is no error in said decree; he denies that the same was obtained by fraud and surprise; he also denies that the same ought to be reversed; he is informed, and believes that the said original requete and order of survey referred to in the complainant's (the United States) bill, is not forged and counterfeit, but that the same was signed by Miro, as this respondent is informed and believes; but this respondent charges and insists, that, if there be any fraud, corruption, or forgery in the grant to the said Bernardo, or in the decree of the said court, this respondent is wholly ignorant of the same, and all and every part thereof; that he had no knowledge or participation therein. That he is an innocent purchaser for a full, fair, and valuable consideration, and that he ought not to be divested of the land entered by virtue of said decree.

This respondent avers that if there was any perjury or false and corrupt statements by the witnesses in the original suit, he is wholly ignorant of the same; and that if there was any perjury it was without his knowledge, consent, connivance, or procurement; and denies that the said decree was obtained by fraud, coven, and misrepresentation.

This respondent, for further answer to the said bill of the said United States, expressly avers and charges, that, he purchased by deed the claim of the said Bernardo, with other claims, from one John J. Bowie, for a full, fair, and valuable consideration, on or about the 22d day of October, in the year eighteen hundred and twenty-eight; which deed of purchase was filed in the office of the Register and Receiver of the land office at Little Rock, some time in November or December, in the year eighteen hundred and twenty-eight, and is unable to produce the same; but he, for greater certainty, refers to a copy of said deed, which is herewith filed, and marked B, and

made a part of this respondent's answer; and he hereby notifies and requires the said Sam. C. Roane to produce the original.

That the said John J. Bowie, as this respondent believes before that time, purchased of the said Bernardo the claim aforesaid, but that this respondent is unable to produce the deed of conveyance from the said John J. Bowie, the same having been filed with the Register and Receiver aforesaid, some time in November or December, in the year 1828, along with the deed of the said Bowie to this respondent, and which deed is believed to be in the hands of Sam. C. Roane, attorney as aforesaid, who is hereby notified and required to produce and file the same. That, by force of the decree aforesaid, and the conveyances aforesaid, this respondent entered in the land office at Little Rock the northeast quarter of section seventeen, town eleven, south, range twenty-six, west; also, the east half of the southeast quarter of section seventeen, town eleven, south, range twenty-six, (26) west; also, the west half of section thirteen, town eleven, south, range twenty-seven, west; a certificate of which entries is herewith filed, and made part of said answer.

This respondent charges, that, according to the provisions of the act of Congress aforesaid, so far as the said act is applicable to the Territory of Arkansas, every decree entered for a less quantity than five hundred acres of land was, and is, final and conclusive; and that when no appeal was taken from the judgment or decree of said court of Arkansas within one year from its rendition, that the said judgment or decree was, and is, final and conclusive; that the decree in favor of said Bernardo was for a less quantity than five hundred acres, and that no appeal has ever been taken in the case, and that the time for taking an appeal in said case has long since expired.

This defendant denies all unlawful combination or confederacy, in the said bill charged; and having fully answered all matters and things, material and necessary for him to make answer unto, he prays that the said bill of the said United States may be dismissed, and that he have the lands mentioned in this respondent's answer, and also his costs and charges.

WM. TRIMBLE,
For defendant.

The following is the certificate of the Register of the land office, referred to in the foregoing answer, to wit:

"LITTLE ROCK LAND OFFICE,
December 13, 1828.

N. E.	17	11 S.	26 W.	160	I do hereby certify, that Joseph Stewart has this day filed an application in this office for the entry of the lands described in the margin, on a Spanish concession for 400 arpens, confirmed in the name of Bernardo Samperyac; and that the same has been examined and ADMITTED; and a patent certificate will be issued for the same, and forwarded to Washington, with our monthly returns for the present month."
E. ½ S. E.	17	11 "	26 "	80	
W. ½ N. E.	13	11 "	27 "	80	
				320	

Overplus of 20 acres relinquished.

B. SMITH, *Register.*

And whereas, at a superior court continued and holden at the court-house, in the town of Little Rock, on Thursday the 28th day of October, 1830, the following proceedings were had before the honorables Benjamin Johnson, James W. Bates, and Ewd. Cross, three of the judges of said court, to wit:

The UNITED STATES, complainants,
vs.
BERNARDO SAMPERYAC, defendant,
} *In chancery on bill of review.*

This day Sam. C. Roane, United States' district attorney, filed his bill of exceptions to the opinion of the court, granting leave to Joseph Stewart to file his answer in this suit, which exceptions are signed, sealed, and made a part of the record in this case, and are in the following words, to wit:

Superior Court for the adjudication of French and Spanish land claims, October term, 1830.

UNITED STATES,
vs.
BERNARDO SAMPERYAC.
} *Bill of review.*

Be it remembered, that, on the third day of this term, Joseph Stewart came into court and prayed to be permitted to be made a defendant to this bill, and for leave to file an answer to the same. Whereupon, the court ordered that the said Joseph Stewart be made a defendant in this case, and have leave to file his answer. To which opinion of the court, the United States, by Sam. C. Roane, U. S. attorney, begs leave to except, and tenders this his bill of exceptions, which he prays may be signed, sealed, and made a part of the record, which is done accordingly.

(Signed) B. JOHNSON, [SEAL]
J. W. BATES, [SEAL]
EW. CROSS, [SEAL]

The UNITED STATES, compl'ts,
vs.
BERNARDO SAMPERYAC & JOSEPH STEWART, def'ts.
} *On bill of review.*

An order having been entered in this case at the May term, 1830, of this court, requiring the defendant, Bernardo Samperyac, to file, or cause his answer or other appearance in this case to be filed, on or before the first day of the next July term; or in default thereof, that the complainants' bill be taken *pro confesso* against him: and it appearing, from the certificate of William E. Woodruff, editor of the Arkansas Gazette, that he had published said order in said Gazette, agreeable to the said order of court: and it appearing, to the satisfaction of the court, that the said Bernardo Samperyac hath failed to file his answer, or otherwise appear in said case, upon motion of Sam. C. Roane, United States' attorney, it is ordered that the complainants' bill of complaint be, and the same is hereby, taken *pro confesso* against the said defendant, Bernardo Samperyac, to the end that such decree may be made thereupon as may be just; and it is further ordered that this cause be set for hearing at the next term of this court, until when the same is continued.

The UNITED STATES,
vs.
BERNARDO SAMPERYAC & JOSEPH STEWART.
}

On motion of Sam. C. Roane, United States' attorney, it is ordered that he have leave to take depositions to be read in evidence on the final hearing of this case.

The UNITED STATES,
vs.
BERNARDO SAMPERYAC & JOSEPH STEWART.

On motion of Sam. C. Roane, United States' attorney, it is ordered that he have leave to withdraw from the files of this court the original Spanish paper or concession in this case, for the purpose of taking depositions. And it is further ordered that the clerk of this court take copies of such papers, and retain them on the files of this court. ☞ Hon. James Woodson Bates, one of the judges, dissents.

And whereas, at a superior court, continued and held at the court-house in the town of Little Rock, in the Territory of Arkansas, on Wednesday, the twenty-sixth day of January, 1831, the following proceedings were had before the honorables Benjamin Johnson, Tho. P. Eskridge, James W. Bates, and Edward Cross, the four judges of the superior court, to wit:

The UNITED STATES, complainants,
against
BERNARDO SAMPERYAC & JOSEPH STEWART, defendants. } *In chancery on review.*

This day appeared the complainants, by Sam. C. Roane, district attorney, and moved the court, upon the bill, answers, and exhibits filed in this cause, to enter a final decree against the defendants, annulling and setting aside the original decree of this court, confirming confirming to the defendant, Bernardo Samperyac, four hundred arpens of land; which motion is open for argument of counsel for complainants.

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THOS. P. ESKRIDGE.

Thursday morning, January 27th, 1831.—Court met pursuant to adjournment:

Present: the Hons. BENJ. JOHNSON,
THOS. P. ESKRIDGE,
JAS. W. BATES, &
EWD. CROSS. } *Judges.*

The UNITED STATES, complainants,
against
BERNARDO SAMPERYAC & JO. STEWART, defendants. } *On bill of review.*

This day the parties appeared by their solicitors, and progressed in the argument of this cause to the court; and the same not being closed, is adjourned over until to-morrow.

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THOS. P. ESKRIDGE.

Friday morning, January 28th, 1831.—Court met pursuant to adjournment:

Present: the Hons. THOMAS P. ESKRIDGE,
EDWARD CROSS,
JAMES WOODSON BATES,
BENJ. JOHNSON.

The UNITED STATES, complainants,
against
BERNARDO SAMPERYAC & JOS. STEWART, defendants. } *On bill of review.*

This day the parties appeared, by their solicitors, and progressed with the argument in this cause; and the same not being closed, is adjourned over until to-morrow morning.

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THO. P. ESKRIDGE.

Saturday morning, January 29th, 1831.—Court met pursuant to adjournment:

Present: the Hons. THOMAS P. ESKRIDGE,
BENJ. JOHNSON,
JAS. W. BATES, and
EWD. CROSS, } *Judges.*

The UNITED STATES, complainants,
against
BERNARDO SAMPERYAC & JOS. STEWART, defendants. } *On bill of review.*

This day the parties appeared, by their solicitors, and progressed in the argument of this cause to the court; and the same not being concluded, is adjourned over until Monday morning next.

Ordered that court adjourn until Monday morning, 10 o'clock.

THOS. P. ESKRIDGE.

Monday morning, January the 31st, 1831.—Court met pursuant to adjournment:

Present: the Hons. THOS. P. ESKRIDGE,
BENJ. JOHNSON,
JAS. W. BATES, &
EWD. CROSS, } *Judges.*

The UNITED STATES, complainants,
against
BERNARDO SAMPERYAC & JOS. STEWART, defendants. } *On bill of review.*

This day the parties appeared, by their solicitors, and the argument of this cause not being closed, was continued over until to-morrow morning.

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THOS. P. ESKRIDGE.

Tuesday morning, February the 1st, 1831.—Court met pursuant to adjournment:

Present: the Hons. BENJ. JOHNSON,
THOS. P. ESKRIDGE,
JAS. W. BATES, &
EWD. CROSS, } *Judges.*

The UNITED STATES, complainants,
against
BERNARDO SAMPERYAC & JOS. STEWART, defendants. } *On bill of review.*

This day the parties appeared, by their solicitors; and the argument of

this cause being now closed, the same is taken under advisement by the court.

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THOS. P. ESKRIDGE.

Wednesday morning, the 2d February, 1831.—Court met pursuant to adjournment:

Present: Hons. Thos. P. Eskridge & Ewd. Cross, *Judges.*

Ordered that court adjourn until 10 o'clock, to-morrow morning.

EWD. CROSS.

Thursday morning, February the 3d, 1831.—Court met pursuant to adjournment:

Present: the Hons. Ewd. Cross & Thos. P. Eskridge, *Judges.*

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THOS. P. ESKRIDGE.

Friday morning, 4th February, 1831.—Court met pursuant to adjournment:

Present: the Hons. Thos. P. Eskridge, Benj. Johnson, Jas. W. Bates, & Ewd. Cross, } *Judges.*

The United States, complainants, *vs.* Bernardo Samperyac & Jos. Stewart, defendants. } *On bill of review.*

This day the parties appeared, by their solicitors; and

The defendants filed their motion, in writing, to submit the question of forgery, *(val non,)* of the original requite or concession in this case, to the decision of a jury; which motion was taken under advisement by the court.

Ordered that court adjourn until to-morrow morning, 10 o'clock.

THOS. P. ESKRIDGE.

Saturday morning, February the 5th, 1831.—Court met pursuant to adjournment:

Present: Hon. Jas. Woodson Bates, *Judge.*

Ordered that court adjourn until Monday morning next, 10 o'clock.

THOS. P. ESKRIDGE.

Monday morning, February the 7th, 1831.—Court met pursuant to adjournment:

Present: Hons. Benjamin Johnson, Thos. P. Eskridge, & Edward Cross, } *Judges.*

The United States, complainants, *against* Bernardo Samperyac & Jos. Stewart, defendants. } *On bill of review.*

This day the parties appeared, by their solicitors; and the court being sufficiently advised of, and concerning, the motion made in this case, delivered the following opinion of the three judges present, to wit:

"We are of opinion, that the motion to award a feigned issue in this case be overruled, for the following reasons:

1st. Because it rests, in the sound discretion of the chancellor, to award a feigned issue or not; and where the truth of the facts can be satisfactorily ascertained by the chancellor, without the aid of a jury, it is his duty to decide as to the facts, and not subject to the expense and delay of a trial at law. (Dale vs. Rosevelt, 6 Johnson's C. Reps. 255.)

2d. Because the chancellor, when he directs such issue, does it upon the ground that the evidence advanced before him in the record is not sufficient to enable him to arrive at a satisfactory conclusion; he, therefore, directs the facts to be tried by a jury, for the purpose of collecting additional evidence; which additional evidence, when so collected, the chancellor considers, in connexion with that already existing in the records of the chancery court. (Booth vs. Blumdall, 19 Vesey, jr. 500. 1 Archbold's Practice, pages 347, 348, 349.)

3d. Because the verdict of the jury, upon such feigned issue, is not conclusive upon the chancellor; he may have it tried again and again, after repeated verdicts, if these verdicts are not agreeable to his sense of justice; or he may even decree contrary to a verdict, if he thinks proper. (Moris vs. Davis, 14 Seargeant and Lober, 380.)

4th. Because the bill in this case has been taken for confessed; and any distinct and positive allegation in it must be taken as true. (Williams vs. Corwin, 1 Hopkins, 471.)

It is therefore, considered by the court, that the plaintiffs have and recover of the defendants the costs of this motion.

The UNITED STATES, complainants, *against* BERNARDO SAMPERYAC & JOSEPH STEWART, defendants. } *In chancery on bill of review.*

This day the parties appeared, by their solicitors; and the court delivered the following, as the opinion of the three judges present in this case, to wit: "This is a bill of review filed by Sam. C. Roane, attorney of the United States for the Territory of Arkansas, for and on behalf of the United States, to revise, reverse, and annul a former decree of this court, pronounced and recorded at the December term, 1827, in favor of Bernardo Samperyac, for four hundred arpens of land.

The substantial allegations in the bill of review, are, that the decree is erroneous, and was obtained by fraud and surprise; that the original petition, or *requite* and order of survey exhibited in this case, are forged and corrupt; and that the order of survey was never signed by Miro, Governor of Louisiana, as the same purports to have been; and that this fact has come to the knowledge of the said district attorney, since said decree was entered of record; that Bernardo Samperyac is a fictitious person, and never had an existence; that if he ever did exist, he was dead at the time of exhibiting his bill; that John Hebrard, upon whose testimony the decree was made, committed the crime of perjury in giving his testimony; and that the statements sworn to by him upon the hearing of this cause, as set forth in his deposition, are false and corrupt; that the original petition and order of survey in this case, shews upon its face, that it was not made as early as the year 1789, but appears to have been made long since; and that the former decree of this court was obtained by fraud, covin, and misrepresentation, in violation of the principles of equity and of law.

The district attorney, for and on behalf of the United States, avers and says, that since the decree was made in this case, he has discovered new and important record evidence, which was not within his control, and the existence of which, he did not know, and had not time to procure at the hearing of this cause; all which he believes he will be able to procure and exhibit upon the final hearing. The first question made and argued at the bar, which will be considered, relates to the power conferred on this court by the act of Congress of the 26th of May, 1824, entitled "An act enabling the claimants to land within the limits of the State of Missouri and Territory of Arkansas, to institute proceedings to try the validity of their claims."

It is contended by the counsel for the defendants, that the act of 1824 constituted a special tribunal, with limited and restricted powers; that full chancery powers were not conferred; that this court possessed no greater powers than have been heretofore delegated to boards of commissioners, created by acts of Congress, to decide upon claims similar to those now pending in this court; that this court cannot entertain a bill of review, because the authority to do so is not given by the act of 1824: that this court, sitting as a court for the adjudication of French and Spanish claims, possesses no power not delegated and conferred by the several acts of Congress upon that subject, we are ready to admit.

To ascertain the extent of the power and jurisdiction of this court, let us examine the act of 1824; that act provides, "that it shall be lawful for certain claimants to present a petition to the district court of the State of Missouri, setting forth his claim as pointed out in the act; praying in said petition, that the validity of such title or claim may be inquired into and decreed by said court; and the said court is authorized and required to hold and exercise jurisdiction of any petition presented in conformity with the provisions of the act; and to hear and determine the same on the petition, in case no answer be filed, after due notice, or on the petition and answer of any person interested; and the answer of the district attorney of the United States, where he may have filed an answer, according to the evidence which may be adduced by the parties, in conformity with the principles of justice, and according to the laws and ordinances of the government under which the claim originated. A copy of the petition to be served on any adverse claimant, and on the district attorney of the United States, when the Government is interested in the defence." The act further provides, that any petition which shall be presented, shall be conducted according to the rules of a court of equity, except that the answer of the district attorney of the United States shall not be required to be verified by his oath, and tried without any continuance, unless for cause shown; and said court shall have full power and authority to hear and determine all questions arising in said cause, relative to the title of the claimants, &c.; and, by a final decree, to settle and determine the validity thereof, according to the laws of nations, &c., and all other questions properly arising between the claimants and the United States; and the court may, at its discretion, order disputed facts to be found by a jury, according to the practice of said court, when directing issues in chancery before the same court; and in all cases, an appeal to the Supreme Court of the United States is allowed, within one year from the rendition of the judgment or decree, the decision of which court shall be final and conclusive between the parties; and should no appeal be taken, the judgment or decree of the said district court shall, in like manner, be final and conclusive. By the 14th section of the act of 1824, it is enacted, that

all the provisions of that act shall extend to and be applicable to the Territory of Arkansas, and for the purpose of finally settling and adjusting the title and claims to land derived from the French and Spanish Government; the superior court for the Territory of Arkansas shall have, hold, and exercise jurisdiction in all cases, in the same manner, and under the same restrictions and regulations, in all respects, as by this act is given to the district court for the State of Missouri.

The question arises under the foregoing act, whether this court has been clothed with full and complete chancery jurisdiction and power, in adjudicating upon these claims; or whether it has been invested with a limited and restricted authority, capable of performing nothing which is not expressly delegated by the act; resembling rather a board of commissioners than a court of equity? Upon the best reflection which we have been able to bestow upon the subject, we entertain little doubt that the act of 1824, intended to confer, and does confer, upon this court the full and ample power of a court of chancery.

Instead of creating a special tribunal, a board of commissioners, to decide and report upon claims like these, Congress have referred them to the decision of a court possessed of common law and chancery jurisdiction; a court invested with a part of the judicial power of the United States.

The cases, when brought before this court, are to be conducted according to the rules of a court of equity. This court then, possessing both chancery powers and common law jurisdiction, are required to try these cases on the chancery side of the court. The fact that the cognizance of these claims is given to a court possessed of full and ample equity jurisdiction, with the injunction to try the cases according to the rules of a court of equity, goes far to prove that Congress intended to refer them to the judiciary, and allow the United States to be sued before her own courts, that a final termination might be put to these demands upon her justice. The provision for an appeal from the decision of this court to the Supreme Court of the United States, by either party, strongly evinces the intention of Congress that these claims should receive their adjudication by the judiciary of the United States. If then, Congress intended to refer them to the judiciary, can it be reasonably inferred that they intended to limit the general powers of the court to which the reference was made?—we think not. The act, in terms, does not limit the jurisdiction of this court; and we are not to infer a limitation, unless it be expressed, or arises from a necessary implication.

If we are correct in affirming the proposition that the act of 1824 authorizing certain claimants to bring suit against the United States on the equity side, possessed of full chancery power and jurisdiction, it follows, that a bill of review will lie in this court, unless there be something in the act itself forbidding it.

It has been urged that, that part of the act which says, that the judgment or decree of this court, unless appealed from in one year, shall be final and conclusive, necessarily precudes the idea of a bill of review: we entertain a different opinion. The provision just referred to, relates to the time in which an appeal may be taken. It says nothing about a bill of review, or rehearing. Each of these modes of revising the decrees of this court, according to the practice in chancery, is left untouched, and stands precisely as they existed had no time been limited for an appeal.

The court entertains a bill of review, in virtue of the chancery jurisdiction conferred by the act of Congress, by which it was created, and possess-

ing that power previous to the act of 1824, continued to possess it, with the authority to apply it to these cases, for the adjudication of which, the latter act was passed. It is, however, further contended by the counsel for the defendants, that, as the bill of review in this case was filed upwards of two years subsequent to the final decree in the original cause, and more than one year after the time allowed for an appeal had elapsed, this remedy is barred by length of time. In the case of Thomas vs. Harvie's heirs, (10 Wheaton, 146,) the Supreme Court of the United States held, that a bill of review for *error apparent* in the decree, is barred by length of time, unless it is filed before the time limited for an appeal: but, in the same case, the court expressly reserved the question, whether a bill of review, founded upon matter discovered since the decree, is, in like manner, barred by the lapse of the time limited for the appeal. That question is directly presented in this case, and calls for our decision. We have bestowed upon it all the reflection of which we are capable; and the conclusion to which we have arrived, is, that a bill of review, founded upon the discovery of new matter after the decree, ought not to be barred by the lapse of one year, the time limited in these cases; nor do we think it ought to be barred by the lapse of two years and four months, the time between the former decree and the filing of this bill. The reasons assigned by the Supreme , in the case cited, for applying as a bar to bills of review, for error apparent on the face of the decree, the time limited for an appeal, do not, in our judgment, apply to the case of a bill of review founded on new matter, discovered subsequent to the decree. Judge Washington, in delivering the opinion of the court, says, "that, courts of equity, acting upon the principle that *laches* and *neglect* ought to be discountenanced, and that, in cases of stale demands, its aid ought not to be afforded, have always interposed some limitation to suits brought in those courts; and the decision was, that, although bills of review are not strictly within the statute of limitations, yet, courts of equity will adopt the analogy of the statute in prescribing the time within which they shall be brought.

In the case of a bill of review for new matter, recently discovered, no laches or neglect can, we think, be properly imputed to the party filing the bill. It is allowed only on the ground of his ignorance of the existence of the new matter before the former decree; and it is incumbent on him to file his bill in a reasonable time after the discovery is made: all this is alleged in the present bill. The bill could not be filed within one year after the decree, because the new matter had not then come to light, but was subsequently discovered. If then, laches or neglect is not imputable, has so great a time intervened that it may justly be denominated a stale demand? Two years and four months can scarcely be considered in that light. It would not bar an action of assumpsit upon a parol contract, and cannot be considered an unreasonable delay in bringing a bill of review. In England, twenty years is allowed; and in the case decided in 10th Wheaton, before cited, five years was allowed. We do not think, that, to a bill of review, for new matter, no lapse of time ought to bar the remedy. Upon the principle of repose, we think the lapse of a resonable time ought to present a bar; what that reasonable time should be considered, (and it is well settled to be in the sound discretion of the chancellor,) it is unnecessary for us to decide, since we are clearly of opinion that two years and four months is not an unreasonable time for filing a bill of review. Whether the principle settled by the

Supreme Court of the United States, in several cases, that laches is not imputable to the Government, ought to apply in this case, we need not decide.

The second inquiry which arises in this case, and which has been ably argued at the bar, is, whether a case is made out for a bill of review according to the established principles of equity. The material allegations in the bill have already been stated, by which it appears, that, the main and principal ground relied upon for a review, is the discovery of new matter since the making of the former decree. The only allegation we deem material to notice is, that the original petition, or *requite*, and order of survey, on which the decree was based, is forged and corrupt, and was never signed by Miro, Governor of Louisiana; and that this fact has come to the knowledge of the district attorney of the United States since the rendition of the decree, asked to be reviewed; and that he has, since the said decree, discovered new and important record evidence, which was not within his control, the existence of which he did not know, and had not time to procure at the hearing of the cause.

The objections urged by the counsel for the defendants, is, that this is a matter which was put in issue by the pleadings in this case before the former decree was pronounced and recorded: and, having been once put in issue, a bill of review will not lie for the discovery of evidence relating to the matter put in issue previous to the decree; that a bill of review will lie only for error apparent in the decree, or for new matter subsequently discovered, which was not in issue between the parties. Let us examine this position.

The ordinances of Lord Chancellor Bacon respecting bills of review, and generally referred to as good authority, and have never been departed from. (3 Atkins, 26.) The doctrine is there asserted that no bill of review shall be admitted except it contain either error in law, appearing in the body of the decree, or some new matter which has arisen after the decree, and not any new proof that has come to light after the decree was made: nevertheless, upon *new proof* that has come to light after the decree was made, which could not possibly have been used at the time when the decree passed, a bill of review may be granted. According to the doctrine of the above ordinance, the present bill makes out a good case for a bill of review. New proof, important and material, none could be more so, is alleged to have come to light since the making and recording of the former decree, which could not possibly have been used at the hearing, because it was not known by the district attorney to have existence. This new proof is, that the title papers of the defendant are fraudulent and forged; but this fact is said to have been before put in issue; admit it, *argumente gratia*. What is the doctrine asserted by Chancellor Eldon in the case Young *vs.* Keighly? (Ves. jr. 348.) The ground of a bill of review, the Chancellor says, is *error* apparent on the face of the decree, or of *new evidence* of a fact material pressing upon the decree, and discovered after publication in the cause. Again, he says: "As far as I can ascertain what the court permits with regard to bills of review upon facts newly discovered, the decisions appear to be upon *new evidence*, which, if produced in the time, would have supported the original case, and are not applicable where the original cause does not admit of the introduction of the evidence; as *not being* put in *issue originally*. The doctrine is to be found in Cooper's Pleading. (91.) The author asserts "that it must be on new matter, what was before in issue; for a party cannot be entitled to a bill of review on new matter to prove a title which was not in issue." For this position, he

cites Cary's Reports 82, and Ambler's Reports 293. If these authorities are to be relied upon, they prove conclusively, that, in the present bill, a good cause is made out for a review. We are ready to admit, that, in the two cases decided by the court of appeals of Kentucky, reported in Hardin's Reports, a different doctrine seems to be established. But the rule as laid down by Chancellor Eldon, accords better with our views of what the rule ought to be, and accordingly we adopt it as intrinsically correct. But admitting that the new matter must relate to something not before put in issue by the parties; still, we think a case is made out for a bill of review. It is certainly true that the district attorney, in his answer, denied all the allegations in the petition, and required the petitioner to produce proof of them: but, at the same time that he denied them, he stated that he was wholly uninformed as to their truth. It is like the answer of a guardian, denying the allegations of a bill on the ground of ignorance, whether they are true or false; and such answer has been held insufficient to dissolve an injunction. (1 Hopkins Chancery Rep. 1431, Asthrope *vs.* Cornstock, 2 John. C. Rep. 202, Roberts *vs.* Anderson.) By this general denial of the title of the petitioner, no special fact in the relation to that title was put issue. The district attorney made no allegation that the title papers of the petitioner were fraudulent or forged. He could not make such an averment at the time he filed his answer, because he was wholly uninformed as to the authenticity of those papers; and, on that gound, required that they might be proved. There was no controversy as to the fact whether those papers were genuine or forged: no conflicting testimony was introduced, and all the proof adduced before the court was by the petitioner. This surely cannot be such a putting in issue of the fact of forgery *vel non*, as to preclude a re-examination of that matter when subsequently discovered. We suppose the Judges of the court of appeals of Kentucky mean to say, that, after certain material matter or fact has been put in issue, and evidence adduced by each party to that issue, and a decree rendered, a bill of review will not be merely upon the discovery of additional testimony to the same point, unless that evidence consists of record; in which event, they admit that a bill of review will lie. According, then, to the principles settled in Kentucky, a case made out for a bill of review; for the present bill contains the allegation that important record evidence has been discovered conducing to prove that the title papers of the petition are false, fraudulent, and forged. The court of appeals of Kentucky, in the case of Repass *vs.* McClanan, (Hardin's Rep'ts, 346,) say: "There is an important difference between the discovery of matter or fact itself, which, though it existed at the former hearing, was not then known by the party to exist, or which was not alleged or put in issue by either party; and the discovery of new witnesses, or proof of a matter of fact which was then known or in issue. In the former cause, the party not knowing the fact, and it not being particularly in issue, there was nothing to put him on the search either of the fact or the evidence of the fact; and therefore the presumption is in his favor, that, as the matter made for him, his failure to show the matter was not owing to his negligence or fault. They further say, after the most careful search, they cannot find one case reported in which a bill of review has been allowed, on the discovery of new witnesses, to prove a fact which had before been in issue; although there are many where bills of review have been sustained on the discovery of records or other writings relating to the title which was generally put in issue." It cannot be affirmed that the

forgery of the title papers of the petition, *or* was *particularly* put in issue by the former pleadings. The title only was *generally* put in issue, and, according to the authority just quoted, as record evidence in relation to that title is alleged to have been discovered, a clear case is made out for a bill of review. If, *if* then, this court possesses the jurisdiction to entertain a bill of review in the case now before the court, and a case is made out by the bill according to the principles of equity, the next enquiry is, does the evidence adduced call upon the court to pronounce a decree of reversal? What is the evidence? First, the defendant, Samperyac, the original petitioner, in whose favor the former decree was rendered, has failed to answer this bill, and, under a rule of this court, an order of publication was duly published in the Arkansas Gazette; and at the October term, 1830, of this court, the bill was taken for confession, as to the said defendant. The enquiry arises as to the effect of taking the bill for confession. The doctrine is well settled, that when the allegations of a bill are distinct and positive, and the bill is taken for confession, such allegations are taken as true without proof. That a decree *pro confesso* is like a judgment *nil dicet* at common law. (See Williams *vs.* Corwin, 1 Hop. Chan'y Rep'ts 471. 3 Atkin's Rep'ts 168.) In the case of Hawkins *vs.* Crook (2 Pirre Williams, 556) the bill alleged a decree to have been obtained by fraud. The decree assumes that the order to take a bill *pro confesso*, admitted the facts charged as fraudulent, and the court plainly took them to amount to fraud, and, without further proof, decreed the appropriate relief. The authorities clearly establish this principle, that the allegations are of a nature so distinct and positive, that, taking them to be true, the court can make a decree upon them, it will, upon the order *pro confesso*, decree without *without* proof; where they are in their nature so defective or vague, that a precise decree cannot be made upon them, proof must be adduced from the necessity of the case. No rule can be better founded in reason and propriety. A refusal to deny where the party is legally bound to speak, is equal to an admission of the charges made against him: what is admitted need not to be proved.

The allegations are unconstitutionally established, when confessed by him against whom they are made. This is the doctrine applicable to original bills, and we have, in our researches, been able to find no case where the doctrine has been applied to bills of review. Perhaps it may be because no such case exists, and that this is the first where a bill of review has ever been taken pro confesso. But the principle applies with equal force and propriety to the latter, as to the former. The allegations of this bill are, that the title papers are forged and spurious, and that witness who proved them committed perjury. These allegations, when admitted, destroy the evidence upon which the former decree was based, are distinct and positive in their nature, and justify a decree without additional proof. But admitting that the doctrine applicable to original bills, in relation to the effect of taking a bill pro confesso, ought not to be applicable to bills of review, still we are of opinion, that the evidence adduced in this case is full and conclusive, to prove that the title papers upon which the former decree was based, are forged, fraudulent, and spurious. Let us advert to the evidence: Hilery B. Cenas, register of the land office at New Orleans, states in his deposition, that he has instituted a careful search among the Spanish records under his charge, particularly in a book, entitled *Register de las primeres decreter de concesion;* in which book it was customary, any order of survey as it was first made, from the year 1786 up to 1799, inclusive, and could not find

any order of survey of lands in favor of, or granted to, Celestine Armon, in the district of Arkansas. He further says, that he has examined the form of orders of survey, as sworn to by Judge Tessier and Jean Mercier, the register of mortgages in New Orleans, and found it to correspond with the orders of survey or record in his office; that he has compared the signatures affixed to orders of survey, upon which Messrs. Tessier and Mercier have given their depositions in the cases of the United States against the persons named in said depositions, and that he verily believes that they are false and counterfeit. By consent of parties, this deposition was read in this case, to prove the same facts in relation to the order of survey in favor of Samperyac. Isaac T. Preston, late register of the land office at New Orleans, asserts that he has examined the papers annexed to the depositions of Jean Mercier and Charles Tessier, in the cases in which they have given their depositions before the honorable Gillen Preval, purporting to be Spanish orders of survey. The signatures are not in the hand writing of Governor Miro or Gayoso, as they purport to be. Deponent is well acquainted with the signatures of those Governors, having seen their genuine signatures to many different records. Deponent further says, that said papers are not in the form in which Spanish orders of survey were given, but that the form annexed to the depositions of Mr. Tessier and Mr. Mercier, were adopted in all orders of survey deponent, except when the nature of the place to be surveyed, required a different form. He further states, that he has seen the deposition of Helery B. Cenas, register of the land office at New Orleans; and that deponent, when register of the same office, made a similar search, with the same result. Charles Tessier deposes, that he, a clerk in office of the late Spanish Government, from the commencement of the year 1790, to the end of the year 1802; that he was acquainted with the handwriting of Governor Miro, and Manuel Gayoso de Lemos, from seeing them write frequently; and says, positively, that the signature of Miro presented to him, and appended to the order of survey in this case, (and which has been signed by me, *nevariator*,) is not in the hand writing of the said Governor Miro; that the decree or order of survey is not in the form used and prescribed in such case, nor is it recorded as was the usual practice in granting lands by the Governor; that the practice was to insert at the foot of the said order, the word *regd.*, with the flourish of the recording clerk; further, that spelling of the said decree is not according to the rules of Spanish *orthography*, and that the clerks whose duty it was to write such orders, were all good Spanish scholars, and would not have been permitted to use such spelling in any official business; that the handwriting of the aforesaid order of survey is not that of any of the clerks that were, at that time, employed in that department of the Government, the deponent being well acquainted with the handwriting of all the clerks who wrote in the office during the time he was in the employ of the Government, and he is also acquainted with the handwriting of those that preceded him for many years. This witness further states, that he has no recollection of John B. Hebraro, Harea Devere, and Lemuel Masters, and is positive that these men were not familiar in the office of the Spanish Government, and never known or seen in that office; that he does not know the handwriting of the order of survey in this case; that it is not in the handwriting of any of the clerks that ever were employed in the office of the Spanish Government, then existing; Jean Mercier, a clerk in the office of the late Spanish Government in Louisiana, from 1792 to 1801, deposes to the same facts, in any respects, testified to by Charles Tessier, and which it is unnecessary to repeat.

Antoine Cruzat Sent deposeth that he was employed as an officer of the regiment of Louisiana, in the office of Governor Manuel Gayoso de Lemos, all the time he was Governor of Louisiana, under the Spanish Government. That he has had frequent opportunities to see and examine the signature of Governor Miro, and to see him also sign his name. He further says that he is well acquainted with the handwriting and signatures of all the clerks of the office of the said Governors; and that he has no hesitation in saying, that the signatures of Miro and Gayoso, appended to the orders of survey, in which Charles Tessier and Jean Mercier have given their depositions before Judge Pruval, pursuant to several commissions from the superior court of the Territory of Arkansas, are not genuine, as well as the handwriting of the orders of survey. That the spelling of said orders of survey is incorrect, and that no clerk would have been permitted to use it; that the form of the orders of survey, as given by Mr. Mercier and Mr. Tessier, is the only true and correct one; that he has never known any men by name of John B. Hebrard, David Devere, and Lemuel Masters; and that he is confident they have never been seen in the office of Governors Miro and Manuel Gayoso de Lemos, at New Orleans.

The deposition of Martin Durald, late register mortgages in New Orleans, taken in a similar case to the one now before the court, in which the United States is plaintiff, and Martin Durald defendant, has been read as evidence in this case by consent of parties. He deposes that he was born in Louisiana, and has never had any grant nor any order of survey for any land in the Territory of Arkansas; that his father was of the same name with himself, and that, to the best of his knowledge, his father has never had any land in the Territory of Arkansas; that he is well acquainted with all the names of the French and Spanish inhabitants of Louisiana, as having kept a public office in New Orleans; and that he knows no person, except his father and himself, of the name of Martin Durald; that he had a brother by the name of Joseph V. Durald, and that, to the best of his knowledge, his said brother never had any land in the Territory of Arkansas.

From the testimony, it is manifest that the order of survey in this is not to be found recorded in the record-book at New Orleans, in which it was usual and customary to record any order of survey made from 1786 to 1799. The same fact is also proved in relation to every case, amounting to upwards of one hundred, now pending before this court upon bills of review. Tessier, Mercier, Preston, and Cenas, all depose to this fact; Tessier, Mercier, Cruzat, all of them well acquainted with the handwriting of Governor Miro, and having frequently seen him write, swear that the name of Miro, signed to the order of survey in this case, is not in his handwriting, and therefore not genuine. Cenas, the present register, and Preston, the late register of the land office at New Orleans, both swear that they have seen many genuine signatures of Governor Miro; and, from the comparison with the present order of survey, the signature is not in the handwriting of Governor Miro. Tessier, Mercier, and Cruzat, depose that they are well acquainted with the handwriting of all the clerks who wrote in the Spanish Governor's office at New Orleans, and that the order of survey, in this case, is not in the handwriting of any clerk who ever wrote in the said office, and that the form of the order of survey in this case is not in the form used by the Spanish Government; Cenas and Preston also swear to this latter fact: Tessier and Mercier swear that Hebrard was never seen in the Governor's office at New Orleans. The fact that the

name of Samperyac, the original petitioner and defendant to this bill, is signed in a good handwriting to the petition to the Governor for a grant, and that mark is used in the deed of transfer to John J. Bowie, is also in proof. It is further in proof that the defendant, Samperyac, has never made his personal appearance in this court, nor has one of the original claimants, amounting to one hundred and seventeen, ever appeared here, except by John J. Bowie, their agent, and the counsel employed by him; and the counsel admit that they have never seen one of the original claimants, in whose favor the former decrees of this court were made. The evidence upon which the former decree was made, is the deposition of John B. Hebrard. In deciding upon this testimony, we think there is no rational ground to doubt, we are entirely satisfied, and believe it to be abundantly manifest, that order or survey, upon which the former decree was made, is fraudulent, forged, and counterfeit; and Samperyac himself is an ideal fictitious being, and never had an existence except in name. The fact that Samperyac, nor any of the other claimants, have ever appeared here, or been seen by their counsel employed for them, that no one of them has filed an answer in these cases of review; that their title papers, upon which the former decrees of this court rested, are not to be found of record where such papers were generally and usually recorded; that their title papers are not in the form used at the time, by the Spanish Government, in making concessions of land; that they are misspelt, and, above all, that they have been proven by the testimony of three or four witnesses, who stand above suspicion, having the best opportunity of being well informed; to counterfeit, forged and spurious, speak a language not to be misunderstood, and calculated to produce the strongest conviction, that the order of survey, on which the former is based, is a forged and spurious paper; and, consequently, that the former decree of this court ought to be reversed, unless there is some other circumstance in the case to prevent it. There is, however, another defendant in this case besides the original petitioner. Joseph Stewart, at a former term, appeared, and, on his motion, was admitted a defendant to this bill of review, and has filed his answer: In it, he alleges that he is an innocent purchaser, without notice, for a valuable consideration of the land decreed by a former decree of this court; that he purchased from John J. Bowie, who, he alleges, purchased from Samperyac, the original petitioner, and exhibited the deeds of transfer or assignment. He denies all the allegations, in this bill, of *fraud*, *forgery*, and *perjury*, but admits his entire ignorance of these matters, and prays this, his interest, may be protected by this court.

The question arises, what effect this answer is entitled to have in the decision of this cause? The defendant Stewart, in our judgment, does not occupy the attitude of an innocent purchaser without notice, so as to stand on any higher ground than the defendant, Samperyac, himself. The interest which he has purchased in the land decreed by this court, is an equitable, and not a legal right. It is well settled, that a judgment or decree is not assignable at law, so as to vest a legal title in the assignee. The act of Congress of 1824 does not authorize the assignment or transfer of the decree of this court; and, under that act, the land decreed to the claimant could not be entered or located only in his name, or in the name of his legal representatives, in case of his death, and the patent could issue only to the claimant or his legal representatives, not to his assignees. Stewart, then, can only be considered as the purchaser of an equity; and it is an established princi-

ple, that a purchaser for a valuable consideration without notice, in order to protect himself, must be clothed with the legal title, and not a mere equity. (2 Madd. Chy. 258 Bradlyn vs. Ord, 1 Atkins, 517, 3 Do. 377.) The defendant, Stewart, having only an equitable title under the former decree of this court, takes it subject to all the equity which attached to it in the hands of his assignor. It cannot be asserted that Stewart is a purchaser *under the former decree* of this court. This can be true only when there has been a *judicial sale;* in which case the purchaser is protected, though *though* the judgment or decree is erroneous. Upon this ground alone, we think it is obvious that the defendant, Stewart, stands on no other or different ground than the original petitioner, in whose favor the former decree was made.

2d. If, however, we are mistaken in this position, still we think the defendant Stewart is not entitled to be protected as an innocent purchaser without notice, on the ground that the transfer from Samperyac to John J. Bowie is a forgery. The evidence establishing this fact will be briefly detailed. The transfer or deed from Samperyac to John J. Bowie of the land decreed by the former decree of this *of this* court, now claimed by Stewart, bears date on the 14th day of February, 1828, and is attested by Henry Hobbs and John Cook, and proved by the said Cook before John Williams, as justice of the peace in Clark county, in this Territory. By consent of parties, about sixty-six deeds of transfer from the original claimants, in whose favor this court have made decrees, all of which are now pending in this court upon bills of review, and are similarly situated with the case now under consideration, have been filed as evidence in this cause. Twenty-four of those transfers, from the original claimants, are made to John J. Bowie, attested by John Cook and another name. The first of these transfers bears date on the 29th day of December, 1827; in a few days after the decree was entered of record. The second bears date on the 18th January, 1829. The 3d on the 19th; the 4th on the 21st; the 5th on the 24th, of the same month and year. The 6th bears date on the 4th of February, 1828. The 7th on the 6th; the 8th on the 8th; the 9th and 10th on the 9th; the 11th on the 10th; the 12th and 13th on the 11th; the 14th on the 12th; the 15th on the 13th; the 16th on the 20th; the 17th, 18th, and 19th, on the 21st; the 20th on the 22d; the 21st on the 23d; the 22d on the 28th; the 23d and 24th on the 29th February, 1828. These 24 transfers, one of which is the transfer in this case, purport to have been executed by the original claimants, in whose favor the decrees of this court were made, to John J. Bowie, are all attested by the name of John Cook and another, and certified by John Williams, a justice of the peace in this Territory, to have been proved before him by John Cook, the subscribing witness. How does it happen that this witness, John Cook, should have been present to witness the execution of twenty-four deeds from different persons, to John J. Bowie, and most of them on different days? Could it have been necessary that Bowie should have employed this Mr. Cook to travel round with him to become a witness to their execution? Could Bowie have procured witness residing near these claimants to attest their deeds of transfer to himself? How does it happen that Bowie is so fortunate as find these original claimants so soon after the decree of the court was made? One of them he found in a few days after the decree: in a shorter time than would be required to travel beyond the limits of this Territory. Having been fortunate in the commencement, his good fortune never seems to desert him until he ob-

tains all the transfers. On the 4th of February he finds one them; one of them on the 6th; he is equally fortunate on the 8th, another; on the 9th he finds two; and on the 11th, his efforts are still crowned with greater success, he finds three; on the 23d of the same month he finds three others; and by the 29th of February, he discovers all of them. Thus, it would seem, that these original claimants, not one of whom can now be found to answer these bills of review; these men, whom the counsel employed by John J. Bowie to advocate their rights, never saw these men; not one of whom are proven to be living, or that they ever did exist:—These are the men whom John I. Bowie finds residing so near each that he could obtain the deeds of three of them in one day; all find all of them in little more than one month after the decrees. If, however, we could believe all this, is it not passing strange that Mr. Cook, whom nobody knows, should have happened to be present at all these various times and places ready to attest these transfers, from the original claimants to John J. Bowie? unless we indulge the presumption, that Bowie employed this Mr. Cook to go along with him to attest these deeds, for which we can see no reasonable motive, we are unable to account for his presence whenever wanted or called for by Bowie. Bowie must have had a talisman, possessed of the magical power of Aladan's lamp, by which he calls up, at his bidding, this omnipresent witness. We have no doubt that this witness, like the genius in the Arabian tales, having performed the office for which he was invoked, has vanished into air, and disappeared for ever. In addition to these 24 deeds of transfer, thirty other deeds of transfer or assignment from the original claimants to John J. Bowie and other persons, are, by consent, exhibited as evidence in this cause: all these deeds are attested by Lemuel Masters and other names, and certified by Joseph J. Williams, a notary public, in Louisiana, to have been proved before him by Lemuel Masters, on the 29th day February, 1828. The two first bear date on the 10th of January, 1828; the 3 and 4 bear date on the 20th; the 5 and 6 on the 21st; the 7 on the 24th; the 8 on the 25th; the 9 and 10 on the 26th; the 11 on the 27th; the 12 on the 28th; the 13 and 14 on the 29th of January, 1828; the 15 and 16 bear date on the 2d day of February, 1828; the 17 on the 9th; four more on the 10th; one on the 11th; one on the 13th; one on the 21; two on the 22d; one on the 25th; one on the 26th; one on the 27th; and the remaining three on the 28th of February, 1828. Lemuel Masters, the witness who proves these deeds, is not an ideal being, but is one of the three witnesses who proves the original claims, and on whose evidence the former decrees of this court were made. This circumstance adds nothing to his credit. Why should one of these witnesses to the original claims, brought here by JohnJ . Bowie, which fact is known to this court, (he being the only person who appeared here as agent of the claimants) have been selected to travel round and attest the deeds of transfer from these claimants? All the remarks made in relation to the twenty-four transfers, apply with equal force to the thirty just named.

Can it be believed that Lemuel Masters could find eighteen of these original claimants in one month, and four of them in one day ? If they resided so near each other, why have not one of them answered these bills ? Why has no deposition been taken to prove that any one of them ever had an existence ? Why, in short, has John J. Bowie, himself, answered these in the character of an innocent purchaser ? The defendant, Stewart, claims through him, and the answer of Bowie might be received upon the same ground. This circumstance is pregnant with proof, that these transfers are

fraudulent and base forgeries, and that the original claimants never existed, except in name. There is another peculiarity about these transfers, calculated to throw discredit upon them. It is this: in thirteen of these deeds it is manifest, from an inspection, that the name of one of the witnesses thereto is written in the same hand writing with the body of the deed, and in the same ink. It is not usual or common for a witness to a deed to be called upon to write the deed itself; and, as the witness is never after heard of, the presumption is very strong that he, too, lives only in name. There are also 12 other deeds of transfer filed, by consent, as evidence in this cause. We will not waste our time remarking upon them. To pursue the subject further, would be worse than useless. In investigating frauds, like these, the mind sickens and the feelings revolt. From a review of all the evidence in this case, we entertain no doubt that the transfer in this case, which purports to have been made from Bernardo Samperyac to John J. Bowie, is false and forged; and consequently, upon that ground also, the defendant, Stewart, cannot be permitted to occupy the attitude of an innocent purchaser, fairly and *bone fide*, from Bowie. But, his recourse is upon Bowie, of whom he purchased; and he cannot stand upon other and different ground than Bowie himself. The act of Congress, of the 26th May, 1824, from which this court derives its authority to decide in these cases, has been continued in force by several subsequent acts, the last of which was passed on the 8th of May, 1830. That act has expressly given the power to this court to entertain bills review in these cases, and to reverse the former decrees of this court, if, upon upon a revision, it shall appear that these decrees were based upon *forged title papers*. From the view we have taken of this case, it has not become necessary for us to consider the question made, and ably argued the bar, whether Congress have not, in the act of 1830, transcended the limits of sound legislation? and we withhold the expression of an opinion upon it, as we are satisfied that the act of 1824 referred the decision of these cases to this court, sitting as a court of chancery; and that, under the system of equity by which this court is governed, a power exists to entertain a bill of review in the present case. It is, therefore, adjudged, ordered, and decreed, that the former decree of this court, in favor of the defendant, Bernardo Samperyac against the United States, for four hundred arpens of land, pronounced and recorded at the December term of this court, in the year 1827, be, and the same is hereby, reversed, annulled, and held for nought. And it is further ordered, that the defendant, Joseph Stewart, pay his own costs in this case.

The following is a true copy of the original requete, or order of survey, in the foregoing case, of Bernardo Samperyac, on which the former decree of this court was founded, to wit:

A el Senor Governado de la provincia de la Louisiana y dependencias, &c. &c. &c.

Bernardo Samperyac deseando establesere sobre el rio de Preses en las Arkansas suplica a vs. le ago la gracia de la profondidad ordiniaria ciendo tieras de S. M. C. Y. no aciènd peyincio es gracia que el demandante aguardo, de viustra bondad y reuga a dios N. Senor que conservia sus dias. Neuva Orlians, 6 de Octbr. de 1789.

BER^DO. SAMPERYAC.

NEUVA ORLIANS, 11 *de Octbr. de* 1789.

El agrimensor de estu provincia Dn. Carlos Tradeau establisera esta parte sobre los dies arpanes de tiera que pide con la profondidad ordenearia y expresene continuacion los tiraites para que consten al trinefro haser opio para libur el titular en forma.

MIRO.

The following is the evidence on the trial of this cause on the bill of review, to wit: The deposition of Charles, taken before the hon. Gallien Preval, associate judge of the city court of New Orleans; taken in the city of New Orleans, on the 7tl day of December, 1830, agreeable to notice, to wit: at the room of the district court of the United States for the eastern district of Louisiana—and the said Charles Tessier, having been duly sworn, deposes and says: "That, he entered as a clerk in the office of the late Spanish Governmen in Louisiana, from the commencement of the 1790, to the end of the year 1802; and that he was acquainted with the handwriting of Governor Miro and Manuel Gayoso de Lemos, from having seen them write frequently; and he says, positively, that the signature of Miro, presented to him, and appended to an order of survey in this case, (and which has been signed by me nevariatur,) is not in the handwriting of the said Governor Miro. That the decree, or order of survey, is not in the form used and prescribed in such case, no is it recorded, as was the usual practice in granting claims by the Governors. That the practice was to insert at the foot of the said order, the word Reg'ad, with the flourish of the recording clerk; further, that the spelling of the said decree is not according to the Spanish orthography, and that the clerks, whose duty it was to write such orders, were all good Spanish scholars, and would not have been permitted to use such spelling in any official business; that the handwriting of the aforesaid order of survey is not that of any of the clerks that were, at that time, employed in that department of the Government, the deponent being well acquainted with the handwriting of all the clerks who were in the office during the time he was in the employment of Government; and he was also acquainted with the handwriting of those that preceded him, for many years.

Questions propounded to witness, by Sam. C. Roane, Esq., District Attorney for the Territory of Arkansas.

First question. Did you ever know John B. Hebrard, of Ouachita, David Devore, and Lemuel Masters?

Answer. Witness has no recollection of such men, and he is positive these men were not familiar in the office of the Government, and never were known or seen in that office.

Second question. Do you know the handwriting of the order of survey in this case?

Answer. Witness does not, and further says that it is not that of any of the clerks that ever were employed in the office of the Spanish Government then existing.

Third question. What was the form of order of survey used by the Spanish Government in granting lands?

Answer. The order of survey used by the Spanish Government was as follows, to the best of his recollection: "Nueva Orleans, (date,) El

agrimensor-general de esta provincia ò el particular nombrudo éste, establecera esta parte sobre los (so much) arpanes de tierra de frente solicita con la profunciedad ordinaria de quarenta en el parage que indica el memorial antecedente estande vacantes y no causando perjuicio alguno á los cucunvecinos; con la expresa condicion de hacer el camino y desmonte regular en el timieno parenterio de un año y de quedar nula este concesion, si al expriar el preceso, espacio de tres la tierra no se hallare estableceda, y de no poder enagenarla, en los mismos; bajo cuyo supuesto, se extenderán á continuacion las diligencias, de apeo me remitera, para proveer enteresado del correspondiente titulo informa."

CH. TESSIER.

Sworn to, and subscribed before me. New Orleans, December the 7th, 1830.

GALLIEN PREVAL, *Judge.*

And on the same day, and in the same place, personally came and appeared Jean Mercier, esq., who, after being duly sworn according to law, deposes and says as follows: That he entered as a clerk in the office of the late Spanish Government in Louisiana, in the beginning of the year 1792, and continued up to month of July, in the year 1801; that he was acquainted with the handwriting of Governor Miro and Manuel Gayoso de Lemos: that of Governor Miro from having seen him sign his name sundry times, and from having seen his signature affixed to a great number of official documents; and that of Manuel Gayoso, from having seen him sign his name daily during the whole time that he was Governor; and he says, positively, that the signature of *Miro* presented to him, as appended to an order of survey in this case (and which has been signed by me nevaratur) is not in the handwriting of the said Governor Miro. That the decree or order of survey is not in the form used and prescribed in such case, nor is it recorded, as was the usual practice in granting lands by the Governors; that the practice was to insert at the foo*d* of said order the word Reg$^{d.}$, with the flourish of the recording clerk; further, that the spelling of the said decree is not according to the rules of Spanish orthography, and the clerks, whose duty it was to write such order, were all good Spanish scholars, and would not have been permitted to use such spelling in any official business; that the handwriting *writing* of the aforesaid order of survey is not that of any of the clerks that were, at that time, employed in that department of the Government; the deponent being well acquainted with th*at* handwriting of all the clerks who were in the office, during the time he was in the employ of the Government; and he was also acquainted with the handwriting of those that preceded him for many years.

Questions propounded to the witness by Sam. C. Roane, Esq., District Attorney for the Territory of Arkansas.

First question. Did you know John Hebrard, of Ouachita, David Devore, and Lemuel Masters?

Answer. Witness has no recollection of such men, and he is positive that these men were not familiar in the office of the Government, and were never known or seen in that office.

Second question. Do you know the handwriting of the order of survey in this case?

Answer. Witness does not, and further says that it is not that of any of the clerks that ever were employed in the office of the Spanish Government then existing.

Third question. What was the form of order of survey used by *by* the Spanish Government in granting lands?

Answer. The order of survey used by the Spanish Government was as follows, to the best of his recollection: "Nueva Orleans, (the date.) El agremensor general de esto provincia o el particular nombrudo por este establecera esta parte sobre los (so much,) arpanes de tierra de frente que solicita con la profundidad ordinaria de quarenta en el parage que indica el memorial antecedente estando vacantes y no causando perjuicio alguno á los circunvecinos; con la expresa condicion de hacer el camino y desmonte regular en el termino perentorio de un año y de quedar sula este concesion si al expirar el preciso espacio de tres la tierra no se hallare establecida y de no poder enagenuarla en los mismos, bajo supuesto se extendaran a continuacion las dilegencias de apeo, que me remitira para proveer, al interesado del correspondiente titula informa."

J. MERCIER.

Sworn to, and subscribed before me. New Orleans, December 7, 1831.
GALLIEN PREVAL, *Judge.*

On the same day, and at the same place, personally appeared Antoine Cruzat, Sent., now treasurer of the parish of Orleans, who, being duly sworn, deposes and says as follows: That he was employed as an officer of the regiment of Louisiana, in the office of Manuel Gayoso de Lemos, all the time that he was Governor of Louisiana, under the Spanish Government. That he was well acquainted with the signature of said Governor Manuel Gayoso de Lemos, from having seen him sign his name almost every day, during the time that he was in his office as aforesaid; that he has had frequent opportunities to see and examine the signature of Governor Miro, and to see him also sign his name. He further says that he is also well acquainted with all the signatures and handwritings of the clerks of the office of the said Governor Miro and Manuel Gayoso de Lemos; and he has no hesitation in saying, that the signatures of Miro and Manuel Gayoso de Lemos, appended to the orders of survey in the cases to which Charles Tessier and Jean Mercier have given their depositions before Judge Preval, pursuant to several commissions issued by the honorable the superior court of the Territory of Arkansas, are not genuine, as well as the handwritings in the orders of survey. He further states, that the spelling of the said orders of survey is incorrect, and that no clerks in the office aforesaid would have been permitted to use it. And the witness says, that the form of the orders of survey, such as have been given by Mr. Tessier and Jean Mercier, is the only true and correct one; that he has never known any men by the name of John B. Hebrard, David Devoer, and Lemuel Masters; and that he is confident that they have never been seen in the offices of Governors Miro and Manuel Gayoso de Lemos.

A. CRUZAT, SEN.

Sworn to, and subscribed before me, the 18th day of December, 1831.
GALLIEN PREVAL, *Judge.*

And on the same day, and at the same place, personally came and appeared Isaac T. Preston, late register of the land office at New Orleans,

who, being duly sworn, doth depose and say: That he has examined the papers annexed to the depositions of John Mercier and Charles Tessier, in the cases in which they have given their depositions before the honorable Gallien Preval, purporting to be Spanish orders of survey. The signatures are not in the handwriting of Governors Miro or Gayoso as they purport to be. Deponent is well acquainted with the signatures of these Governors, having seen their genuine signatures to a great many different records. Deponent further says that said papers are not in the form which Spanish orders of survey were given, but that the form annexed to the depositions of Mr. Mercier and Mr. Tessier were adopted in all orders of survey deponent has seen, except where the nature of the place to be surveyed required a different form. He further states, that he has seen the depositions of Hilery B. Cenas, register of the land office at New Orleans; and that deponent, when register of the same office, made a similar search with the same result.

ISAAC T. PRESTON.

Sworn to, and subscribed, before me, this 7th day of December, 1831.

GALLIEN PREVAL, *Judge.*

The deposition of Hilary B. Cenas, to wit:

I, Gallien Preval, associate judge of city court of New Orleans, have caused Hilary B. Cenas to appear before me on this day, the 18th of December, 1831, at room of the district court of the United States for the eastern district of Louisiana; and the said Hilary B. Cenas having been duly sworn, according to law, deposes and says, as follows: That he is now register of the land office at New Orleans, and as such, at the request of Sam. C. Roane, esq., district attor. for the Territory of Arkansas, has instituted a careful search among the Spanish records under his charge, particularly in a book entitled, "Registro de los primeros decretos de concesion," in which book it was customary to enter any order of survey as it was first made, from the year 1786 up to 1799 inclusive, and could not find any order of survey of lands, in favor of, or granted to Celestine Armon, in the district of Arkansas. He further says, that he has examined the form of orders of survey, as sworn to by the honorable Judge Tessier, and Jean Mercier, the register of mortgages in New Orleans, and found it to correspond with the orders of survey on record in his office. That he has compared the signatures affixed to the order of survey, upon which Messieurs Tessier and Mercier have given their opinion in the cases of the United States against the persons named in said depositions, and he verily believes that they are false and counterfeit.

HILARY B. CENAS.

Sworn to, and subscribed, before me, this 18th day of December, 1830.

GALLIEN PREVAL, *Judge.*

And by consent of parties, the deposition of Martin Duralde, taken at the said place, was read in evidence on the trial of this cause, which deposition is as follows, to wit: The United States *vs.* Martin Duralde. "And on the same day, and at the same place, personally came and appeared, Martin Duralde, esq., late register of mortgages in New Orleans, who after being duly sworn, deposes and says, that he is born in Louisiana; that he has never had any grant, nor any order of survey, for any land in the Territory of Ar-

kansas; that his father was of the same name as himself; that to the best of his knowledge, his father has never had any land in the Territory of Arkansas; that he is well acquainted with all the names of the French and Spanish inhabitants of Louisiana, as having kept a public office in this city; and that he knows nobody but his father and himself of the name of Martin Duralde. He may state, also, that to the best of his knowledge, his said brother has never had any land in the Territory of Arkansas.

M. DURALDE.

Sworn to, and subscribed to before me. New Orleans, December, 1830.

GALLIEN PREVAL, *Judge.*

The following statement, of judge Benjamin Johnson, was also, by consent of parties, made a part of the evidence in this cause, which is as follows, to wit: "Benjamin Johnson, one of the judges of this court, on the hearing of this bill, stated and made oath to the same; that when the district attorney of the United States moved for a continuance upon the former hearing of this case, and read the grounds for the continuance stated in the bill of exceptions, the counsel for the petitioner stated, that if Mr. Roane wanted time to impeach the credit of the witnesses for the petitioner, or if the district attorney could procure any evidence conducing to prove that the claim of the petitioner was not genuine; then the counsel admitted that the district attorney had made out a good ground for a continuance. The district attorney then said that he had lately attempted to impeach the credit of Hebrard, the witness in this case, at the Post of Washita, where the said Hebrard resided, and that the most respectable persons there, had deposed that Hebrard was worthy of credit on his oath. That he could not say that he had any reasonable grounds to believe that there existed at New Orleans, or elsewhere, any evidence which would conduce to prove that the claim of the petitioner was fraudulent; but that he asked to have time to examine.

BENJ. JOHNSON.

Sworn to, in open court, February 9th, 1831.

W. FIELD, *Clerk.*

The following motion, in writing, was also, by consent, read in evidence on the trial of this bill of review:

Arkansas Territory, Superior Court for the adjudication of French and Spanish non firmed land claims.

JUAN TOLEDONA, *vs.* The UNITED STATES, } *For the confirmation of* 520 *arpens of land.*

The United States, by their attorney, Sam. C. Roane, moves the court to postpone the final adjudication of this case until the next term of this court, for the following reasons, viz: The petition and subpœna, in this case, was served on the United States within one month of the present term of this court, but more than 15 days allowed by law; and, in consequence of this short notice, the United States' attorney has not answered this bill until the present term.

2d. Has not had a sufficient length of time to take counter depositions, if counter evidence does exist.

3d. There are many more cases pending in this court, on the same principles and similarly situated, in all respects; and the attorney for the United States asks this continuance for the purpose of procuring such evidence as may exist on the part of the Government.

SAM. C. ROANE,
U. S. Att'y A. T.

A, marked—*Feba. Dec.* 17, 1827.

The following bill of exceptions, in the same case, by consent of parties, was read as evidence on the trial of this bill of review, to wit:

UNITED STATES, }
vs. } *December Term*, 1827.
JEAN TOLEDONA, }

Be it remembered, that when this cause came on for trial, the United States, by Sam. C. Roane, their attorney, moved the court to continue this cause to the next term of the court, (which motion included all cases on the docket similarly situated,) for the reasons set forth in a written motion submitted to the court, marked (A,) and made a part of this bill of exceptions; which motion was submitted by Sam. C. Roane, U. S. district att. in his official capacity, without affidavit. Which motion the court overruled, and ordered the cases for trial at the present term of this court. To which opinion and judgment of the court, the United States, by their attorney, Sam. C. Roane, excepts; and prays that his bill of exceptions may be signed, sealed, and made a part of the record.

BENJ. JOHNSON, [L. S.]
W. TRIMBLE, [L. S.]

And, by consent, the following admission was made in this case, and ordered to be made a part of the record in this case, to wit: United States vs. Bernardo Samperyac. " In this case, it is admitted, on the part of the United States, that Joseph Stewart, defendant, did purchase the said claim of John J. Bowie, by deed, for a valuable consideration, in good faith, some time in November or December, eighteen hundred and twenty-eight; but, the district attorney alleges that the deed from Samperyac, the confirmee, to John J. Bowie, is a forgery.

There were also used and read as evidence in this case, by consent of parties, depositions in one hundred and sixteen other cases, of like import to this, now pending in this court upon bills of review; which depositions are all of a similar character, and disclose the same facts, as those now spread upon the record.

The following is the transfer from Bernardo Samperyac to John J. Bowie, and used as evidence in this cause, by consent, to wit:

Know all men by these presents, that I, Bernardo Samperyac, for, and in consideration of eighty-five dollars, to me in hand paid by John J. Bowie, the receipt whereof is hereby acknowledged, have, this day, bargained, granted, and sold, and, by these presents, do grant, bargain, sell, transfer, and deliver, unto the said John J. Bowie, his heirs and assigns forever, four hundred arpens of land, situate in the Territory of Arkansas

as described and set forth in a grant, or concession, made to me by the Spanish Government of the province of Louisiana; and which grant, or concession, was confirmed to me by the decree of the superior court of said Territory, in December, 1827. And by which decree, and by the acts of Congress, in such case made and provided, myself or my legal representatives were authorized to locate the like quantity of land in any land office of said Territory: To have and to hold the above described four hundred arpens of land, with all the privileges and appurtenances thereto belonging, to said John J. Bowie, his heirs and assigns, and to their only proper use, benefit, and behoof, forever. And I, the said Bernardo Samperyac, for the consideration aforesaid, do warrant the title to the lands aforesaid, to said John J. Bowie, and his hers, against the lawful claims of all persons whomsoever. In testimony whereof, I, the said Bernardo Samperyac, have hereunto set my hand and seal, this 14th day of February, 1828.

his
BERNARDO X SAMPERYAC.
mark

Test:

HENRY HOBBS,
JOHN COOK.

On which said deed of transfer, is the following endorsement, to wit:

UNITED STATES OF AMERICA, *Arkansas Territory, Clarke county.*

Before me, John Williams, an acting justice of the peace in and for the Territory and county aforesaid, personally appeared John Cook, a subscribing witness to the within deed of conveyance, and he being duly sworn on oath, sayeth, that he saw the within named Bernardo Samperyac sign, seal, and deliver the written conveyance for the purposes therein contained and expressed. Sworn to, and subscribed, before me, this 16th day of October, 1828.

JOHN WILLIAMS, *J. Peace.* [L. S.]

Attached to said conveyance, are the following certificates:

"I, Robert Crittenden, secretary of the Territory of Arkansas, do hereby certify that John Williams was appointed an acting justice of the peace for the township of Warm Spring, in the county of Clarke, and Territory of Arkansas, on the 15th day of October, 1827; that he was acting as such on the 16th day of October, 1828; and that full faith and credit are due to all his official acts under said commission.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Territory of Arkansas to be affixed at Little Rock, A. T., this 29th day of November, A. D. 1828.

ROBERT CRITTENDEN, [L. S.]
Sec. Arkansas Ter."

TERRITORY OF ARKANSAS, *county of Hempstead,* sct.

I, Allen M. Oakley, clerk of the circuit court, and ex-officio recorder for the county aforesaid, do hereby certify that the annexed and foregoing instrument of writing was filed for record in my office, on the 22d day of

October, A. D. 1828, and the same is now duly recorded in record book, page 238.

In testimony whereof, I have hereunto set my hand, and affixed the seal of my office, at Washington, the 22d day of October, in the year of our Lord one thousand eight hundred and twenty-eight, and of the independence of the United States the 53d.

[L. S.] ALLEN M. OAKLEY, *Clerk, and ex-officio Recorder.*
By J. FISHER, *D. C.*

There were also upon the trial of this cause, by the consent of parties, other transfers in cases now pending in this court of a similar character, and as referred to in the opinion of the court in this case, were used and read as evidence on this trial; and also, by consent, in like manner original requets, or orders of survey of a similar character to the one in this case, and which are filed in the several suits now pending in the court, were used and read as evidence on the trial of this cause; also, the following deposition of John B. Hebrard, taken and used at the trial of the original on the petition in this case, and is as follows, to wit:

BERNARDO SAMPERYAC *vs.* UNITED STATES.

Arkansas Territory, United States' Superior Court, December term, 1827. *In the matter of the petition of Bernardo Samperyac, for the confirmation of four hundred arpens of land.*

John Hebrard, of the parish of Ouchita, and State of Louisiana, aged about seventy one years, being sworn, says, that he was Alcade in the province of Louisiana, under the Spanish Government, from the year one thousand seven hundred and eighty-nine to ninety-one, under the appointment of Miro, Governor of said province; that he was Commandant in Catahoola, from the year ninety-seven, until the country was delivered to the United States, under the appointment of Manuel Gayoso de Lemos, Governor of said province; that he was well acquainted with the handwriting of the said Governors; that he has often seen them both write; that he was often in the executive offices during the times they were respectively Governors; and, from his official situation, he had occasion for a continued correspondence with each of them during the times they were respectively Governors of said province; that he has examined the signature to the concession and order of survey of Bernardo Samperyac in this case, (a copy of which petition and order is filed with the bill in this case,) and says it is the signature, and in the proper handwriting of Miro, Governor of said province at the date of said concession, or order of survey, in this case. Witness says, that the concession, or order of survey, in this case, is in the most usual form and mode of granting lands by said Governors, and was such a title as could have been perfected *perfected* into a title in form under the Spanish Government; and when thus granted, were considered and treated by the petitioner and the Government as established titles, and were to be surveyed or not as the concessioner chose; the concession, or order of survey, calling for lands fronting on waters, were to be run off, when surveyed, as follows: Commencing from forty to sixty feet back from the beginning of the highest high land, after passing all overflowed, if any, in front; and the concessioners were authorized to locate them on entirely good, arable land, so as neither

to include overflowed or barren land, unless they chose. Witness says the command of Arkansas commenced on the Mississippi river, at a place called the Little Prairie, about forty miles below New Madrid, and fronted on the Mississippi down to Grand Point Coupee, (now called Lake Providence, in Ouchita parish, and State of Louisiana,) and extended back west, so as to include all the waters which run into the Mississippi from the west between those points.

That, from an examination of the map country bounding on Strawberry river, and from his own knowledge of that stream, and having hunted, trapped, and traded with the Indians, with a large party under his command, of Indians and whites, for about three years, he has no doubt that the lands in this case have been appropriated by the Government of the United States.

Cross-examined.

Do you know Bernardo Samperyac ?

Answer. I do; and believe he is now living on Red river, in Natchitoches parish, and that he resided in said province at the date of said order of survey.

Did you have a written commission when commandant of Catahoola; and is it in existence; and if so, where is it ?

Answer. I had a written commission from Manuel Gayoso de Lemos, as commandant of Catahoola, which is now at my residence in Louisiana; also, a commission from Miro, as Alcade, which is also at my said residence.

Are you acquainted with the manner and the consideration for which the Spanish Governors granted lands to individuals ?

Answer. I was; the consideration was frequently for services rendered the Government, but much more frequent to induce population; and any man, from any quarter, could, and generally did, obtain concessions and orders of survey.

Did the Spanish Governors ever keep a record of grants for land ?

Answer. They did, but the destruction of the offices in New Orleans, by fire, was supposed to have destroyed a great part; and, I have no doubt, many more were purloined and taken off by officers attached to the Executive offices at or about the change of Government; and, if I recollect right, the fire in New Orleans was about the year 1792 or '93.

Do you know whether the Governors General were limited in granting lands ?

Answer. I think they were as to jurisdiction. They were authorized and empowered by the laws, usages, and customs of the Spanish Government to grant lands thoughout the domain in the province of Louisiana, which commenced at the mouth of the Mississippi river, and *and* extended back so as to include all Upper and Lower Louisiana. As to quantity of land—they were authorized to grant any grant, by not exceeding one league square.

J. HEBRARD.

Sworn to, and subscribed in open court, 19th December, 1827.

THO. W. NEWTON, *D'y Clk.*

And at a superior court, continued and held at the court-house, in the town of Little Rock, on Wednesday morning, February the 9th, 1831, the following opinion was delivered by Jas. Woodson Bates, one of the judges of said court, to wit:

"The UNITED STATES, complainants, *against* BERNARDO SAMPERYAC, and JOSEPH STEWART, defendants, } *On bill of review.*

I dissent from the opinion of the court, as delivered in this cause on Monday last. I part with my associates on the threshold—on the point of jurisdiction; and, therefore, in the brief opinion which I shall give for the grounds of my disagreement, I shall not find it necessary, or even proper, to touch the other points which have been raised and so ingeniously and elaborately argued. *Obsta principens*, is a maxim dear to the lovers of sound Government. I shall endeavor on this, as on all other occasions, to manifest my appreciation of its value.

By the treaty negotiated by the United States, in 1803, with the French Republic, for the acquisition of Louisiana, our Government became bound, in good faith, to perfect certain obligations which the previous Governments, Spanish and French, had contracted with their citizens or subjects.

But this treaty guarantee had no stipulation as to mode, and the Government does not recognize in the citizen to sue without its consent. This consent was given by the act of Congress, of May, 1824. Tribunals were created in the State of Missouri or Territory of Arkansas to adjudicate claims to land founded on French and Spanish grants; of which tribunals, this is one:—a special and extraordinary tribunal, created by the law referred to. Under this law, and before this tribunal, the claimant instituted his suit; which, at its maturity, ripened to a decree in his favor. The bill of review has beeen instituted to annul and reverse the decree; for, that the grant is a forgery, and the claimant a suppositious character. It is foreign to my purpose to inquire into the well foundedness of these allegations, for, whatever the decision, in the view which I take of the subject, it could lead to no practical result. I assume it as a postulate, not to be questioned, that the Government going into the courts, is to be tried only by the same rules, and have the same measure of justice meted out to it, that the law secures to ordinary parties litigant. The law of 1824 gave to the party, against whom the final decree of this court should be given, the right of appeal within one year from the time of its rendition. The appeal not applied for, the decree became final and conclusive. More than a year had elapsed before the filing of the bill of review in this case. I will not moot the point, whether a bill of review would lie at all: it is rendered more than superfluous from the obvious fact, that no revision of the decree, of any kind, was sought for within the year. But it is said that the Congressional legislation of May, 1830, puts this question at rest, cures all defects, gives jurisdiction—gives it, too, to defeat rights, and destroy vested interests, growing out of, and based on, a former act of Congress. Such, it is true, is the import of the verbiage of the law, but is it so? Can it be, that the Federal Legislature has the constitutional competency so to do? We could expect to find such a doctrine prevailing only in the worst days of the most tyrannical Governments. It is a language that Sejanus may have whispered to Tiberius. It is a language that may hold, at this day, in the meridian of Constantinople and St. Petersburgh, where the mandate of the Sultan or the ukase of the Emperor supersedes reason, subverts right, and abrogates law. It is a language repudiated even in constitutional monarchies; and it is a language which, if received here as orthodox, goes convincingly to prove that that liberty of

which we have so proudly boasted, has an existence rather in name than in essence.

Yet, highly objectionable as I deem this law, I couple with that objection no ascription of motives. It was, probably a work of much haste—the principles it involves not pushed to their conclusions, and not seen in their practical results. I think I heard, in argument, that the principles of this act might be inoperative when sought to be brought to bear on the property and right of the citizens of the States; but that Congress had unlimited and illimitable power over the Territories. This proposition scarcely requires the show of refutation; it is incompatible with the genius of our Government, and is, as it regards this Territory, palpably in violation of treaty stipulations.

I cannot resist the conclusion, that we have not cognizance of this case: that the bill of review be dismissed for want of jurisdiction.

The following agreement was made and entered of record, to wit:

The UNITED STATES, complainants,
vs.
BERNARDO SAMPERYAC, and JOSEPH STEWART, defendants,
} *On bill of review.*

In making up the record in this case, we agree, as follows:

1st. In recording the depositions taken in this case, the commission and notice, and other formal parts, may be omitted, and that the statement of witnesses, questions, and answers, only be recorded.

2d. In regard to depositions taken in other causes, but read to corroborate the testimony in this cause, we agree, after recording the depositions taken in this cause, that the clerk shall make the following statement, in lieu of recording at length the depositions taken in other causes, viz: We agree that the said witnesses give the same testimony in the other cases pending in this court, so far as the original concessions, or orders of survey, were submitted to them, amounting to about sixty-five cases. And, in regard to about fifty-two other cases, also pending in this court, in which the original document of concession, or order of survey, had been, by leave of the court, taken out of the clerk's , and, on that account could not be shown to the witnesses, to obtain their opinions of handwriting, form, orthography, &c. the said Preston and Cenas, the late and present register of the land office at New Orleans testified, in a similar manner, that they had made search for, and could find no trace of, any of said claims on the records of that office. And, we further agree, that the reference made by the court, in delivering their opinion in this case, to the several deeds of transfer from the confirmees to John J. Bowie and others, is correctly recited in said opinion; and that the statement by the court, relative to said transfers, be used, in lieu of spreading all the transfers on the records. And it is further agreed, if either party wish, they shall be at liberty to use, in the Supreme Court any or all of the original Spanish orders of survey, or transfers from the comfirmees to John J. Bowie and others, as they were used in this court on the trial of this bill of review.

WM. KELLEY,
Sol. for respondents.
S. C. ROANE,
For U. S.

The UNITED STATES, complainants,
vs.
BERNARDO SAMPERYAC and Jos. STEWART, def'ts. } *On bill of review.*

This day the parties appeared, by their solicitors, and the defendant, Joseph Stewart, by his solicitor, prayed an appeal in this case to the Supreme Court of the United States. On motion, it is therefore ordered, that the said defendants have leave to take up said appeal upon entering into bond, in the clerk's office of this court, in the sum of five hundred dollars, with Joseph Stewart, as principal, and Chester Ashley, Robert Crittenden, and William Trimble, as securities, conditioned to prosecute said appeal in the court above, and to pay all costs and charges in said case that have already accrued, or that may hereafter accrue, provided said suit shall be decided against said defendants in the Supreme Court.

And at a court continued and held at Little Rock on the 16th day of February, being on Wednesday, in the year 1831, the following additional agreement was made in this case, to wit:

The UNITED STATES, complainants,
vs.
BERNARDO SAMPERYAC and Jos. STEWART, def'ts. } *On bill of review.*

The parties in this case appeared and entered into the following additional agreement, to wit: "We agree that, on the 8th day of October, 1828, the United States issued a patent to Joseph H. Egnar and Charles McArthur, assignees of Valare Martin, in whose name the claim was confirmed by this court, at the same term, on the same testimony that the cases were decided that are now under review; also, on the same day, a patent to Morgan Magness, assignee of Israel Grant, a confirmee under the same circumstances at the same term.

WM. KELLY, *Sol. for def'ts.*
WILLIAM S. FULTON.

And at a superior court continued and held in the town of Little Rock, on the 18th day of July, 1831, the following bond was filed in this case, to wit:

"*Arkansas, July* 15, 1831.

UNITED STATES,
vs.
BERNARDO SAMPERYAC and
JOSEPH STEWART. } *Superior court for the adjudication of French and Spanish land claims.*

Know all men by these presents, that we, Joseph Stewart, as principal, and Chester Ashley, Robert Crittenden, and William Trimble, as securities, are held and firmly bound unto the United States, in the penal sum of four hundred dollars, lawful money of the United States; the payment of which, well and truly to be made, we bind ourselves, our heirs, &c., firmly by these presents. Sealed with our seals the date above.

The condition of the above obligation is such, that, whereas the said United States, at the January term of this court, in the year 1831, obtained a decree against the said defendants on a bill of review, reversing a former decree of said court, wherein the said Bernardo was complainant, and the